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United States 1323

Circuit Court of Appeals

For the Ninth Circuit. |

L. E. DOAN,

Appellant,

vs.

B. T. DYER,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

FILED

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F. D. MONCKTON,
CLERK

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Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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W. H. METSON Esq., and R. G. HUDSON, Esq.,
Balboa Bldg., San Francisco, Calif.,

Attorneys for Appellee.

In the Southern Division of the United States
District Court for the Northern District of
California, Second Division.

No. —

Dept. —

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Amended Complaint.

Comes now the plaintiff and by leave of the
Court first had and obtained, makes and files this
his amended complaint in the above-entitled case
and for cause of action alleges as follows:

I.

That plaintiff is and at all of the times herein
mentioned has been a resident of the State of Cali-
fornia.

II.

That defendant is and at all of the times herein mentioned has been a resident of the State of California.

III.

That heretofore and on or about the —— day of August, 1918, at and in the said State of California, plaintiff and defendant associated themselves together and entered into and formed a copartnership for the general purpose of carrying on business together in operating oil bearing lands and interests [1*] therein and in mineral oils in the United States, and in particular in the States of Texas, Oklahoma and Louisiana.

IV.

That the more specific purposes of and for which said copartnership was formed as aforesaid were to acquire oil bearing lands, leases on oil bearing lands, of dealing generally in and buying and selling oil-bearing lands, and of acquiring interests in corporations dealing or to deal in the same, and interests in the assets of such corporations, either as copartners or by the formation of corporations to be controlled by plaintiff and defendant, or in which plaintiff and defendant, or either of them might or should become interested.

V.

That said agreement of partnership was wholly an oral one and its terms are and were not reduced to writing.

*Page-number appearing at foot of page of original certified Transcript of Record.

VI.

That plaintiff and defendant thereupon entered upon such copartnership business and ever since have continued to transact and carry on the same except in the respects as to which said defendant has repudiated the same as hereinafter specified.

VII.

That under and by virtue of said copartnership agreement it was agreed and stipulated by and between said plaintiff and said defendant that they and each of them should and would [2] give their attendance and devote their entire time and attention to the business thereof and to the furtherance and advancement of the partnership business and affairs to their mutual benefit and advantage. That said plaintiff and said defendant should from time to time furnish to and for such copartnership such sums of money as should be necessary to promote and carry on its business and purposes and that they should divide the profits, if any, thereof between them, share and share alike.

VIII.

That it was further understood and agreed as one of the terms of said agreement of copartnership that said copartnership should continue and be in full force and effect until dissolved by the mutual consent of said plaintiff and said defendant.

IX.

That it was further understood and agreed as one of the terms of said agreement of copartnership that each of the parties thereto would and should

at all times during the continuation thereof, keep full, just and true accounts and records of accounts, wherein each of said copartners would account for all moneys and properties of whatsoever kind by them or either of them received, acquired, paid out, transferred or disbursed as well as all profits and losses made or sustained by reason or on account of the said business and all other matters and things whatsoever to the said copartnership and management thereof in any wise belonging.

X.

That as the result of the conduct and maintenance of [3] said copartnership and its business, said plaintiff and said defendant have, as such copartners acquired and disposed of certain oil-bearing lands and leases on oil-bearing lands, actual or potential and now own certain valuable lands and leasehold interests and interests in corporations and in the assets thereof of the approximate value of \$250,000.00.

XI.

That pursuant to the conduct of the said copartnership business each of the parties thereto, to wit, said plaintiff and said defendant, have from time to time paid each to the other certain moneys and delivered and transferred certain properties or rights therein and certain interests in corporations and in or in the assets thereof.

XII.

That said copartnership has never been dissolved and that the same is now in full force and effect.

XIII.

That plaintiff has at all times fully complied with all of the terms and conditions thereof.

XIV.

That since the commencement of said copartnership the defendant has wrongfully and in violation of his trust, and against the will and without the assent of this plaintiff, detained and applied certain of the moneys and properties of their said copartnership business to his, defendant's use, greatly exceeding the proportion thereof to which he was and is [4] entitled, and by reason thereof has become indebted to said copartnership, and has thereby impeded and injured the business thereof and the rights and interests of this plaintiff therein, and defendant has devoted his time and attention to his personal business and affairs to the detriment of said copartnership business.

XV.

That plaintiff is unable to state the value of properties and moneys so converted by defendant to his, defendant's own use, but plaintiff is informed and believes, and upon such information and belief avers the fact to be that the value of same amounts to many thousands of dollars.

And in this behalf plaintiff avers that among the properties and assets of said copartnership so converted by the defendant to his, defendant's own use, is a certain interest in the capital stock of a certain corporation caused to be formed by the defendant, and known as the Doan Oil Co., Inc., and which said

corporation was formed by said defendant acting for said copartnership, to take over and to acquire and it did take over and acquire for the benefit of said corporation, certain interests in oil lands at or near Shreveport, Louisiana, and other places, and in which said corporation the plaintiff is entitled to a one-sixth interest of the capital stock thereof.

XVI.

That plaintiff has requested the defendant to pay and deliver, assign and transfer to said copartnership, the moneys, properties and interests as received by him said defendant, as aforesaid, and to which said copartnership is entitled, [5] or to account to said copartnership therefor, but that the said defendant has heretofore failed, neglected and refused and still does fail, neglect and refuse to pay and deliver, assign and transfer the moneys, properties and interests as received by him, said defendant, as aforesaid, and to which the said copartnership is entitled and to so account, and has threatened to and does continue to receive and retain and withhold moneys, properties and interests which in equity and good conscience he should transfer, assign, pay over and deliver to said copartnership and this plaintiff.

WHEREFORE, the plaintiff prays the judgment of this Court as follows:

1. That the said copartnership may be dissolved, and an accounting taken of all the dealings and transactions thereof and of its properties.

2. That defendant be required to account for all copartnership dealings and transactions and all in-

terests and properties by him received, moneys paid out by defendant and belonging to said copartnership.

3. That the property of said copartnership be sold and its debts paid, and the surplus, if any, divided between the plaintiff and defendant as their respective interests may appear.

4. For such other and further relief as may be just, together with the costs of this suit.

W. H. METSON,

R. G. HUDSON,

Attys. for Pltff. [6]

State of California,

City and County of San Francisco,—ss.

B. T. Dyer, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing amended complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief and as to those matters he believes the same to be true.

B. T. DYER.

Subscribed and sworn to before me, this 2d day of Dec., A. D. 1920.

[Seal]

ELLA J. McALEER,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Dec. 8, 1920. Walter B. Mal-
ing, Clerk. [7]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division.

No. 543—EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Answer.

COMES NOW the defendant above-named and answering plaintiff's complaint on file herein denies that defendant is a resident of the State of California and in this connection alleges that defendant was at the time of the commencement of this suit and ever since has been and still is a citizen and resident of the State of Louisiana, and a nonresident of the State of California; denies that heretofore and on or about the —— day of August, 1918, or at any other time or at all in the State of California or in any other place, plaintiff and defendant entered into or formed a copartnership for the general purpose of operating oil-bearing lands or interests therein and in mineral oils in the United States or in particular in the States of California, Texas, Oklahoma and Louisiana, or for any other general or particular purpose or for any other purpose whatsoever; and denies that plaintiff and defendant entered into or formed a copartnership at any time or at any place and for any purpose whatsoever.

Denies that the more specific purposes of and for which said alleged copartnership was formed, as alleged in plaintiff's complaint, were to acquire oil-bearing lands, leases on oil-bearing [8] lands, of dealing generally in and buying and selling oil-bearing lands, and of acquiring interests in corporations dealing or to deal in the same, and interests in the assets of such corporations either as copartners or by the formation of corporations to be controlled by plaintiff and defendant, or in which plaintiff and defendant or either of them might or should become interested; and in this connection defendant denies that any copartnership was formed for any purpose whatsoever; denies that said alleged agreement of partnership was wholly or in part an oral one or that its terms were not reduced to writing and in this connection alleges that no agreement of partnership, either oral or in writing was entered into by plaintiff and defendant; denies that plaintiff and defendant thereupon or at any time or at all entered upon such or any copartnership business and denies that plaintiff and defendant ever since or for any time or at all have continued to transact and carry on the same in any manner whatsoever; denies that under and by virtue of said copartnership agreement or under and by virtue of any other agreement it was agreed or stipulated by and between said plaintiff and said defendant that they and each of them should or would give their attendance and devote their entire time and attention to the business thereof and to the furtherance and advancement of the partner-

ship business and affairs to their mutual benefit and advantage; and denies that it was agreed or stipulated that said plaintiff and said defendant should from time to time furnish to and for such copartnership such sums of money as should be necessary to promote and carry on its business and purposes and that they should divide the profits, if any, thereof, between them, share and share alike, and bear the losses, if any, between them, share and share alike. In this connection defendant alleges that defendant did not at any time enter into any agreement with plaintiff whereby it was agreed that they should give their attendance [9] or devote any time or attention to any partnership business or that plaintiff and defendant should furnish to any copartnership any sums of money whatsoever.

Denies that it was further understood and agreed as one of the terms of said alleged agreement of copartnership that said alleged copartnership should continue to be in full force and effect until dissolved by the mutual consent of the said plaintiff and the said defendant and in this connection alleges that no agreement of copartnership or copartnership existed at any time between plaintiff and defendant; denies that it was further understood and agreed as one of the terms of said alleged agreement of copartnership or at all that each of the parties thereto would or should at all times during the continuation thereof or at any time or at all keep full, just and true accounts and records of accounts, or any accounts whatsoever, wherein

each of said copartners would account for all moneys and properties of whatsoever kind by them or either of them received, acquired, paid out, transferred or disbursed as well as all profits and losses made or sustained by reason or on account of the said alleged business and all other matters and things whatsoever to the said copartnership and management thereof in anywise belonging, or wherein each of said copartners would account for any moneys or properties whatsoever or in any other thing; and in this connection defendant alleges that at no time did he agree with plaintiff to keep any accounts whatsoever.

Denies that as a result of the conduct of maintenance of said alleged copartnership or its business said plaintiff and said defendant have as such copartners acquired or disposed of certain or any oil-bearing lands or leases on oil-bearing lands, actual or potential, and further denies that plaintiff and defendant as copartners now own certain or any lands or leasehold interests or interests in corporations or in the assets thereof; denies that [10] pursuant to the conduct of the said alleged copartnership business each of the parties thereto, to wit, said plaintiff and said defendant, have from time to time or at any time paid each to the other certain or any sums or delivered or transferred certain or any properties or rights therein or certain or any interests in corporations or in the assets thereof.

Denies that said alleged copartnership is or was at any time in full force and effect and in this con-

nection alleges that no copartnership ever existed between plaintiff and defendant; denies that plaintiff has at all times or at any time or at all fully or otherwise complied with all or any of the terms or conditions of said alleged copartnership; denies that since the commencement of said alleged copartnership or at any time or at all the defendant has wrongfully or unlawfully or in violation of his trust or any trust or in violation of any other thing applied certain or any of the properties of said alleged copartnership business to his, defendant's use in any amount whatsoever or at all; further denies that by reason thereof or by any other thing defendant has become indebted to said alleged copartnership or to any other copartnership or person or to plaintiff as a member thereof or at all and further denies that defendant thereby or in any other manner has impeded or injured the business thereof or any other business or thing or any right or interest of the plaintiff therein or in any other thing, and further denies that defendant has devoted his time and attention or done any other thing to the detriment of said alleged copartnership business; denies that defendant applied to his own use in the manner alleged in paragraph fourteen (14) of said complaint a certain or any interest in the capital stock of Doan Oil Co., Inc., or any other property whatsoever; further denies that plaintiff is entitled to a one-sixth ($1/6$) interest or any other interest in said Doan Oil Co., Inc., a corporation, or otherwise, [11] or at all.

Denies that defendant continues to or at any time received or retained or withheld properties or interests which in equity and good conscience defendant should pay over and deliver to said alleged copartnership or to plaintiff.

WHEREFORE, defendant prays that plaintiff take nothing by his said complaint and that defendant have judgment for his costs of suit together with such other and further relief as the Court may deem proper.

C. W. DURBROW,
JOHN BREUNER, Jr.,
Attorneys and Solicitors for Defendant. [12]

State of California,
City and County of San Francisco,—ss.

C. W. Durbrow, being first duly sworn, deposes and says: That he and John Breuner, Jr., are the attorneys for the defendant above named; that the defendant is absent from the City and County of San Francisco where affiant and John Breuner, Jr., have their offices and for that reason makes this verification on defendant's behalf; that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

C. W. DURBROW.

Subscribed and sworn to before me this 22d day of June, 1920.

[Seal] FRANK J. HARVEY,
Notary Public, in and for the City and County of
San Francisco, State of California.

Receipt of a copy of the within answer is hereby admitted this 22d day of June, 1920.

W. H. METSON,
Attorney for Plaintiff.

[Endorsed]: Filed June 22, 1920. Walter B.
Maling, Clerk. [13]

In the District Court of the United States for the
Northern District of California, Southern
Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Memorandum.

W. H. METSON, Attorney for Plaintiff.

C. W. DURBROW and JOHN BRUNER, Attorneys for Defendant.

RUDKIN, District Judge.—This is a suit to dissolve a partnership and wind up its affairs. The question involved is largely one of fact. The defendant earnestly insists that the testimony on the part of the plaintiff is not sufficient to establish

the partnership relation, and that for that reason alone the bill should be dismissed.

It would serve no useful purpose to attempt a review of the voluminous testimony, direct and circumstantial, tending to show the exact relationship subsisting between these parties. But taking into consideration the circumstances attending their advent into the oilfields of Texas, Oklahoma and Louisiana, their conduct and course of business while there, their correspondence, the admissions made by the defendant from time to time, both oral and written, and all the surrounding circumstances, I have little hesitation in finding that their venture was a joint one at least, and I am inclined to the opinion that it constituted [14] a partnership as defined by the Civil Code of California. Whether the relation was the one or the other is perhaps not very material, as substantially the same rights duties and obligations appertain to both.

The contention on the part of the defendant that the plaintiff was only an employee and that in any event Louisiana was not included in their field of operation is not sustained by the proof. Letters written by the defendant before leaving California disclose the opposite. The contention that the parties had a final and definite understanding in the early part of June, 1919, whereby the plaintiff was in effect excluded from Louisiana, or that his interest in Louisiana property was contingent upon his doing certain things in Texas, is hardly consistent with the subsequent conduct of the parties and is not established.

It is to be regretted that intelligent men will permit important business relations to rest in parole when the death of either will seal the lips of both, and when experience has so often demonstrated that prosperity offers temptations that speculators cannot always resist. The plaintiff has established his case by ample and sufficient testimony, and the usual decree will be entered winding up the affairs of the concern and appointing a Special Master to take an accounting. It is hoped that the parties will be able to agree upon the Special Master.

Let a decree be entered accordingly.

NOTE: For the benefit of counsel in preparing the decree, I might add that the relationship between the parties was dissolved in March, 1920, and the accounting should not extend beyond the date of dissolution.

[Endorsed]: Filed Jany. 4, 1921. Walter B. Maling, Clerk. [15]

In the District Court of the United States, in and
for the Northern District of California, Southern
Division.

No. 543—EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

(Interlocutory Decree.)

This cause came on to be heard on the 2d day

of December, 1920, upon the amended complaint and bill of plaintiff herein, and upon the answer of defendant to the original complaint standing, also, as the answer to said amended complaint and bill, and it appearing that the original complaint herein was filed in the Superior Court of the State of California in and for the City and County of San Francisco and that said cause was thereafter transferred in to this court upon the motion and application of the defendant herein, and testimony and proofs having been given, had and taken herein, and it now appearing to the Court that plaintiff is and at all of the times herein mentioned was a citizen of the State of California, that defendant was prior to the commencement of this suit and at all times since has been and is now a citizen and resident of the State of Louisiana, and it further appearing to the Court that in the latter part of August, 1918, in the State of California, plaintiff and defendant orally associated themselves together and entered into and formed a copartnership for the general purpose of carrying on business together in operating oil-bearing lands and interests therein, and in mineral oils in the United States, and under which they were to acquire oil-bearing land and leases [16] on oil-bearing lands and to deal generally in buying and selling oil-bearing lands and acquiring interests in corporations dealing in or to deal in the same, and interests in the assets of the said corporations either as copartners or by the formation of corporations to be controlled by plaintiff and de-

fendants, or in which plaintiff or defendant, or either of them might or should become interested, and it appearing to the Court that plaintiff and defendant thereupon and thereafter entered upon such copartnership business and did, until on or about the 22d day of March, 1920, continue to transact and carry on said business, and it further appearing to the Court that said plaintiff and defendant agree to and did give their attention to and did devote time and attention to the business of said copartnership, and that each did from time to time furnish and supply moneys for the purpose of promoting and carrying on the business of said copartnership, and it appearing further that the said plaintiff and defendant were to divide the profits of said business between said plaintiff and defendant equally, and it appearing to the Court that on or about the 22d day of March, 1920, the said defendant did repudiate said partnership, but that prior to said date the said plaintiff and defendant did acquire certain lands and oil leases upon oil lands in the State of Texas and in the State of Oklahoma, and in the State of Louisiana, and shares of stock in certain corporations, to wit, in the Doan Oil Company and the Martin-Considine Syndicate,

NOW, THEREFORE, this Court doth declare that the partnership in the amended complaint and Bill mentioned is dissolved as and from the 22d day of March, 1920, and doth order and decree the same accordingly.

The Court doth further declare that the said

properties [17] and interests in lands, leases and stocks above mentioned, are in equity assets of the said partnership and the Court doth now order that this proceeding be referred to H. M. Wright, Esq., as a Special Master to take and make the following account and inquiry—that is to say—

1. An account of the partnership dealings between the said plaintiff and defendant since the — day of August, 1918, and including an account of dealings with partnership assets and the acquisition thereof, and the disposition thereof, and the advances made by each, and the receipts obtained by each, and the property obtained by each since that time down to March 22d, 1920, and from March 22d, 1920, all of the avails and profits received of property on hand on said March 22d, 1920, or since received from the sale, trading in or other disposition thereof.

2. An inquiry of what the partnership assets, property and effects now consist and in what manner and upon what terms and conditions the same may be sold most beneficially to all parties interested therein, and it is ordered that said partnership estate and property and effects be divided or sold, with the approbation of the Court, in such manner and upon such terms and conditions as shall appear to be most beneficial to the parties interested therein.

IT IS ORDERED, ADJUDGED AND DECREED that either party may apply at the foot of this decree for further relief not inconsistent

with that previously awarded, upon notice in writing addressed to the solicitor who has appeared for the opposite party.

Dated, January 14, 1921.

FRANK H. RUDKIN.

[Endorsed]: Filed and entered January 18, 1921.
Walter B. Maling, Clerk. By J. A. Schaertzer,
Deputy Clerk. [18]

In the Southern Division of the United States
District Court in and for the Northern Dis-
trict of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Special Master's Report on Accounting.

The interlocutory decree ordering an accounting is dated January 14, 1921, and was filed and entered with the Clerk on January 18, 1921. On February 1, 1921, on motion of counsel for plaintiff, defendant was directed to serve upon counsel for plaintiff and file with the Special Master, a verified statement in writing of matters set forth in the decree. Later during the proceedings, the plaintiff was likewise required to file a written statement of his account with the partnership. In due course, defendant filed his statement of

account and later an amended account and plaintiff likewise filed an account. All of said documents and orders are herewith separately returned.

On March 15, 1921, I was attended by W. H. Metson, Esq., and Roy Hudson, Esq., attorneys for plaintiff, and C. W. Durbrow, Esq., and John Breuner, Jr., Esq., attorneys for the defendant and a hearing was had on that date, and on March 21st, March 23d, April 1st, April 4th and April 7th, 1921, when the case was submitted on briefs thereafter to be filed. The proceedings were taken [19] stenographically by Charles R. Gagan and Edward W. Lehner, official reporters of the Court and the transcript thereof is herewith separately returned. The following exhibits were also received in evidence: Plaintiff's Exhibit "Maguire Statement No. 1," Plaintiff's Exhibits No. 1, 2, 3, 4, and 5. Thereafter briefs were filed by the parties, by the plaintiff on April 12, 1921; by the defendant on April 26, 1921, and by the Plaintiff in reply on May 3, 1921. All said exhibits and briefs are herewith returned. It was stipulated that the evidence taken on the hearing before the Court, together with the exhibits should be part of the evidence upon the accounting and I have examined that evidence. On June 20, 1921, the Master addressed the respective counsel by letter, requesting additional explanation of certain matters regarding the accounting for the disbursement of moneys by Defendant and the respective counsel replied, presenting in written form explanations or arguments by their consulting ac-

countants, copies thereof being also furnished opposing counsel. This correspondence I have bound together in one document and separately returned as matter in the nature of additional argument.

So far as the defendant's accountant, Maguire, has presented certain matters with attached affidavits, which may be deemed new evidence, although no objection for irregularity has been offered, I will say that I have not regarded such new matter, but have only regarded the accounting explanation of matter already in evidence.

The above statements, transcripts and exhibits, together with the evidence and exhibits in the main case constitute all the evidence upon which this report is based.

THE TERMS OF THE INTERLOCUTORY DECREE AND THE NATURE [20] OF THE PARTNERSHIP DISCUSSED.

As frequently happens in references before a Master, counsel have yielded somewhat in their briefs, to a reargument of matters already settled by the interlocutory decree. This, of course, is of no avail since the decree is the chart of the Master's authority and sets the limit of his powers. The evidence in the main case has, however, been properly referred to by counsel and examined by the Master to determine matters of a subsidiary character upon which the decree is silent, such as salaries, interest on capital advanced, and the like.

The decree discloses that the partnership between plaintiff and defendant was formed under

oral terms of association in the State of California. Its limits in time are set as the latter part of August, 1918, for the beginning, and the 22d day of March, 1920, as the termination of the partnership. Its general purpose is defined as "carrying on business together in operating oil-bearing lands and interests therein and in mineral oils in the United States and under which they were to acquire oil-bearing lands and leases on oil-bearing lands and to deal generally in buying and selling oil-bearing lands and acquiring interests in corporations dealing in or to deal in the same, and interests in the assets of said corporations either as copartners or by the formation of corporations to be controlled by plaintiff and defendant, or in which plaintiff or defendant or either of them might or should become interested." Paraphrasing this more briefly, the scope of operation, in territory, was coincident with the United States. The subject matter was mineral oil, oil-bearing lands and interests in the same or the securities of corporations dealing in such properties. It is also recited that the plaintiff and defendant agreed to and did give their attention to the business of [21] the copartnership and that each did from time to time furnish and supply moneys for the purposes of the partnership. The Court finds as to their respective interests that the parties were to divide the profits equally. As matters of accomplishment, the Court finds that during the term of the partnership, the plaintiff and defendant acquired lands and leases upon oil lands in the

states of Texas, Oklahoma and Louisiana and shares of stock in certain corporations, namely, the Doan Oil Company and the Martin-Considine Syndicate.

The evidence shows further something of the manner of operation of the partnership. Both Dyer and Doan were what are ordinarily called "promoters," using that word in its legitimate sense. Each had some capital and credit and in addition, each represented or had promises from groups of capitalists desirous of investing money in the oil business. Apparently they sometimes worked together on a particular piece of land but more often operated independently, but in consultation. From time to time lands would be sold and the profits or losses divided. In 1919 Doan entered upon the Louisiana field, operating in part with his own capital and in part with capital furnished by Messrs. Titus and Lucey as the largest contributors. This enterprise, subsequently organized as the Doan Oil Company, was extremely successful. During the latter part of 1919 and the early part of 1920, the greater part of Dyer's time was apparently given to the management of the North Texas Supply Company, an enterprise at Wichita Falls, Texas, a business dealing in oil well machinery and supplies. This enterprise was outside the scope of the partnership, but was undertaken by Dyer at Doan's request, in part because it promised well and in part because it was desired by Capt. Lucey, a large investor in the Doan enterprise in Louisiana. [22]

Returning to the terms of the interlocutory decree, I am specifically directed to take the following account:

“1. An account of the partnership dealings between the said plaintiff and defendant since the — day of August, 1918 and including an account of dealings in partnership assets and the acquisition thereof and the disposition thereof, and the advances made by each, and the receipts obtained by each, and the property obtained by each since that time down to March 22, 1920, and from March 22, 1920, all of the avails and profits received of property on hand on March 22, 1920, or since received from the sale, trading in or other disposition thereof.”

It will be observed that a distinction is made between the property or its proceeds and the cost thereof during the partnership until March 22d and after the date of termination of the partnership, the profits or proceeds from the property on hand on that date or since received from sale, trading in or other disposition thereof. I point out that the last words quoted recognize a continuing power, though not necessarily a right, in either partner in whom property of the firm might rest to sell or otherwise dispose of it after March 22, 1920. Dividends received since that date would, of course, be included under the designation of profits.

I am also directed by the decree to make the following inquiry, namely:

“2. An inquiry of what the partnership assets, property and effects now consist and in what manner and upon what terms and conditions the same may be sold most beneficially to all parties interested therein, and it is ordered that said partnership estate and property and effects be divided or sold with the approbation of the Court of the Court in such manner and upon such terms as shall appear to be most beneficial to the parties interested therein.” [23]

Plainly this requires me to find what the existing partnership assets are and to recommend how they be divided or be sold.

It will be noticed that nothing appears in the decree nor in the proceedings as entered in the Clerk's register to show that there were any debts of the partnership and no provision has been made for giving notice to creditors or for proof or payment of debts. I assume, therefore, and the briefs bear out that assumption, that no debts of the partnership exist.

93,000 SHARES OF DOAN OIL COMPANY.

There were issued to L. E. Doan, in compliance with a prior subscription by him for that amount, a total of 100,000 shares of the Doan Oil Company out of an original total issue of 300,000 shares. Defendant claims that of this amount only 93,000 shares can be considered assets of the partnership.

There is no very serious, or at least very effective opposition by plaintiff to defendant's proof that he paid of his own moneys to the Doan Oil Com-

pany or for its benefit, either before or after its organization, the sum of \$93,000.00 for 93,000 shares of stock; the greater part of plaintiff's objection is to the manner of calculating interest, which will be hereafter referred to under a separate heading. The Doan Oil Company was formed on June 27, 1919. Both before that time and thereafter until the company's books were finally opened, that is, from about April, 1919, until September 2, 1919, Doan carried on the business in his own name and with his own bank account. Messrs. Titus and Lucey paid their subscriptions from time to time to Doan, who deposited the money in his own account. From this account consisting of his own and his associates' money, he paid moneys for account of the company. On September 2, 1919, a transfer was made [24] by Doan to the company of all property acquired and a check for the balance paid to the company, after an accountant's settlement and writing up of the books of the Doan Oil Company. This final check is stated in the account and in the briefs and testimony throughout the proceedings as amounting to \$48,738.53. From the letter of Messrs. Durbrow and Maguire written me in July, 1921, after the submission, it appears that the amount stated was a typographical error and that the true amount was \$48,378.53. All doubts which may have arisen from the record as to the proper account of the amount which Doan invested in this stock seems to me conclusively settled from the two letters of Mr. Maguire dated July 1, 1921, in which a recon-

ciliation is set forth. It is entirely clear to me that the amount of his own money invested by Doan in this 93,000 shares was exactly \$93,000.00. Under the decree Dyer is, of course, entitled to one-half of these shares on making payment to Doan of one-half their costs, or \$46,500.00 with interest as hereinafter set forth.

7000 SHARES.

A fuller statement of the facts in evidence is necessary to comprehend the issue arising as regards this 7000 shares of the Doan Oil Company.

Doan began his operations in the way of assembling property and disbursing money under leases as early as April, 1919. On June 27, 1919, the Doan Oil Company was formed. By the original subscription agreement dated June 27, 1919 Louis Titus subscribed for 150,000 shares, J. F. Lucey for 50,000 shares, L. E. Doan for 98,000 shares, S. S. Raymond for 1000 shares, and J. A. Thigpen for 1000 shares, a total of 300,000 shares. (Transcript 227-228.) It is agreed that Raymond and Thigpen were dummy directors and that their shares were the property of Doan. Raymond subsequently resigned and his stock was transferred to J. B. Stephens, who filled [25] his place as a director and secretary of the Company and it is agreed that Stephens was and is a dummy of Doan, who owned the 2000 shares in question. When the books of the Company were opened and Doan transferred to the Doan Oil Company the money in his hands amounting to \$48,378.53 theretofore contributed by Titus, Lucey and himself, his sub-

scription was not complete by \$7000.00. On November 10, 1919 the Board of Directors of the Doan Oil Company passed a resolution "That the salary of L. E. Doan be fixed at \$1000.00 per month." (Transcript 230.) It is obvious that this resolution does not in terms warrant the credit to Doan of back salary, but this was done and the correctness of so doing is not here an issue. The books show that on November 14, 1919 two entries were made to the credit of Doan, one for \$7000.00 and one for \$1000.00. The first is explained as back salary for the seven months from April to October, 1919 inclusive; the second as salary for the current month of November. It may be assumed, though it is not in evidence, that Doan continued in receipt of this salary. By this credit of \$7000.00 Doan's original subscription to 100,000 shares was completed.

Meanwhile, during the period of April to November, Dyer had been engaged in various oil enterprises in Texas and Oklahoma, but had given his time from May chiefly to the North Texas Supply Company. As president of this company he received a salary of \$500.00 a month. He does not include it in his statement of the partnership account. As stated before, Dyer had entered on this supply business reluctantly and had subscribed to 10,000 shares of its stock. His reluctance was due to the fact that he was not skilled in this business and could command no capital for investment except in oil enterprises. He was persuaded by Doan and Lucey to undertake it. Doan desired

to oblige Lucey on account of his help [26] in investing in the Doan Oil Company. Lucey was an extensive dealer in oil well supplies, who desired to enter the North Texas field under cover of another corporation than his own by reason of certain outstanding engagements with others not to enter that field. Dyer did not pay for or otherwise acquire the 10,000 shares; this will be hereafter referred to. Toward the latter part of 1919 Dyer was offered employment by the American Oil Engineering Company as a local representative to discover and investigate opportunities for investment in oil lands in the Texas field. Apparently in the late fall of 1919, the time not being defined, he spoke to Doan about this employment, asking if it would be all right to take it and keep the salary; that he, Doan, was having his salary from the Doan Oil Company. Doan replied that it was all right and it would bring them in touch with New York capital. (Transcript, main case, page 61.)

From a letter by Dyer to Doan dated Fort Worth, Texas, January 21, 1921, Defendant's Exhibit "C," main case, it appears that on January 20th Dyer and Doan had a meeting at Fort Worth, in which payment by Dyer to Doan of his one-half of the Doan Oil Company investment was discussed. Dyer says, "I am going to hold off the getting of the \$50,000.00 until the last minute after you have had your meeting with Mr. Titus and decide on your policy." He goes on to explain that in raising the money he would have to part with some of his stock and if Titus and Doan de-

cided either to sell off some of their land or shares of stock that would reimburse present holders, he would not care to make that sacrifice. In a letter dated January 23, 1920, Exhibit "D," main case, Doan acknowledges receipt of Dyer's letter of the 21st and states that there is no possibility of a sale of land during the next few months succeeding. He also says: "If you are unable to arrange for your [27] money by the first of February; we will have to change our plans somewhat because I will have to raise some money at that time and I am depending on you. * * * if you have to give up one-fourth to raise your money, I will do it for you on the same basis." Dyer answered on January 26, 1920, saying, "I have your letter of the 23d and as I explained to you when you were here, it was agreed that I could obtain this money by giving the one-fourth interest mentioned. You asked me to write by return mail and stated that you would do this on the same basis. If this is agreeable, I would much prefer to handle the matter together with you on this basis as it would eliminate having any outsiders or any complications. If this is agreeable to you, please drop me a line and I would go no further to obtain this money on the outside. I want this absolutely agreeable to you either way and if you prefer to have me get the money advise me and I will get it at once." Defendant's Exhibit "E," main case. No further letters appear that I am aware of, concerning this matter.

On this state of facts, plaintiff contends that he

is entitled to one-half of the 7000 shares as well as of the 93,000 shares. Doan on the other hand contends that he is only accountable for the 93,000 shares and cites the conversation quoted above with respect to the partners retaining their salaries paid by the Doan Oil Company and the American Oil Engineering Company as evidence of an agreement and a term of the partnership that salaries or property obtained by salaries were not partnership assets. Defendant's counsel also refers to the fact that Dyer has accounted neither for his salary from the North Texas Supply Company nor for his salary from the American Oil Engineering Company.

It must be remembered in the first place that in the absence of agreement to that effect, partners are not entitled to [28] salaries from the firm and in the absence of similar agreement, must give all their time to the firm. From this it would follow that any money or other property acquired by either party while engaged in firm business would be partnership assets. This would include salaries or the proceeds of investment of salaries.

In the second place the subscription by Doan to 100,000 shares of the Doan Oil Company, accepted by the Company, became an asset of the partnership. No part of the stock thus subscribed for could therefore be diverted by Doan to his own behalf without an agreement to that effect, since it would, in effect, be allowing him compensation from the assets for services which the law required him to give without special reward.

I do not think that the conversation between Dyer and Doan above quoted can be considered as having a retroactive effect. It is not shown that Dyer knew that Doan had received a \$7000.00 credit for back salary, which he had applied in satisfaction of his subscription. The conversation, moreover, is readily explicable as applying to salaries thereafter paid. This interpretation is borne out by the actual practice of the parties as disclosed in the accounting on this hearing. If Dyer has not accounted for salaries paid to him Doan has not accounted for any salaries paid him after October, 1919. Dyer's failure to account for salary from the North Texas Supply Company from May to October, 1919 is not inconsistent since he doubtless considered that that business was outside the scope of the partnership, that he had done it as a favor to Doan and that the salary was, therefore, properly his. At any rate, I think this is the correct view to take of the North Texas Supply Company enterprise and if I am wrong, it simply means that Dyer must be charged in the accounting with \$500.00 salary per month for the months stated. [29]

To my mind, however, conclusive corroboration of this view is afforded by the letters exchanged between the parties in January, above quoted, some months succeeding the conversation with respect to salaries. Dyer there mentions \$50,000.00 as his share of the contribution to the subscription to the Doan Oil Company stock and Doan in his answer makes no objection to the amount as stated. If

he then thought that these 7000 shares were not partnership assets, it would have been most natural for him to call Dyer's attention to the mistake.

I conclude, therefore, that these 7000 shares of Doan Oil Company stock as well as the 93,000 previously mentioned are partnership assets and that Dyer is entitled to one-half thereof on accounting to Doan for \$3500.00 with interest as hereinafter stated.

SECOND ISSUE OF 33,333 SHARES DOAN OIL COMPANY.

At a director's meeting of the Doan Oil Company held on November 10, 1919, the corporation offered for sale 100,000 shares of its capital stock at \$1.00 per share, payable one-half on or before December 15, 1919 and one-half on or before January, 1920, and that said stock be offered to the stockholders as follows:

50,000 to Titus,

33,333 shares to Doan, and

16,667 shares to Lucey,

and that if any of such stockholders failed to subscribe and pay for all or any portion of their allowance, the stock should be subjected to such further action as the Board might decide. It may be said now that the terms of payment as prescribed were apparently not strictly enforced. It is claimed by plaintiff that the Master should determine the value of the stock of the Doan Oil Company in connection with this second issue and in other connections, but it does not seem to me material. It is sufficient to say that the evidence

[30] shows that the stock was valuable, worth at least the issue price, and in my opinion considerably more. In fact, on March 26, 1920, a dividend of fifty cents per share was declared on the entire capital stock including this second issue of 100,000 shares as well as the first issue of 300,000 shares.

This right given to Doan to subscribe to 33,333 shares by this Company was valuable and was a partnership asset. Good faith to his partner required that Doan should exercise it for the partnership benefit if he could and should also disclose the right to subscribe to Dyer. He did neither.

As to his failure to disclose this subscription right to Dyer, it may be said that his action is, of course, peculiar in that during all this time he was writing voluminously to Dyer about his operations and the success of the Doan Oil Company. However, I draw no special inferences of bad faith for the few months succeeding the passage of the resolution or until about March, 1920, when relations between the partners began to be strained. In any event, it is not evident from the evidence that Dyer would or could have subscribed to this extra stock and so he is not proved to have been harmed by Doan's nondisclosure. He apparently had no considerable funds of his own and his credit is limited by the proofs to \$50,000.00. It is therefore not apparent that Dyer could have taken the extra 16,666 shares any easier than Doan could have done so.

As to Doan's failure to exercise his right, Doan has testified that at that time he did not have the

funds and that has not been proved untrue. His statement is corroborated by the fact that he did not himself pay for any of this stock until March 23, 1920. There is, of course, evidence the other way in the above quoted letter of January 23, 1920, where Doan said that he would take [31] over Dyer's obligation to pay \$50,000.00 to the partnership on the terms mentioned by Dyer. This, however, can be readily explained by Doan's expectation that he could get a loan of the necessary amount and keep all or a portion of the 12,500 shares for himself. In any event, it must be remembered that the terms of the partnership implied a discretion in Doan as to how much of his money he should invest. He certainly could not be compelled to borrow nor even to invest funds of his own if he did not deem it wise. Noninvestment, therefore, in the second issue of stock, as a fact *per se*, is no evidence of bad faith to the firm and Dyer cannot complain.

The actual disposition of the shares do not change this conclusion. The right to take up 3,333 shares went to S. S. Raymond, geologist of the Company. Doan explains that Raymond desired 10,000 and it was agreed between Titus, Lucey and himself that they would satisfy Raymond's desire to pro rata contributions from their respective allotments. Five thousand (5000) shares of this issue went to Claude Gatch and one, Morris. Messrs. Gatch and Morris, business men of high standing in Oakland, California, had on April, 1919, at Doan's suggestion, sent him equal parts of \$5000.00 for

investment in oil properties. It was thus money which Doan had in hand since the beginning of his operations in Louisiana, part of the capital with which he operated and was, therefore a debt of the partnership in the same sense as was money supplied by Messrs. Titus and Lucey to Doan. As a matter of fact, it should have been satisfied out of the first issue. Its satisfaction out of the second issue was the fulfillment of a partnership liability and cannot be questioned by Dyer.

Fifteen thousand (15,000) shares went to Doan's relatives, namely, 5,000 to his nephew, R. E. Doan; 2500 shares to his [32] sister, Hattie E. Doan; 2500 shares to his sister, Mary Elizabeth Doan; 4800 shares to his brother, C. E. Doan; and 200 shares to the latter's daughter, Mrs. Elbert C. Parks. The bare fact that this stock went to Doan's relatives raises a presumption of a collusive arrangement for Doan's benefit at Dyer's expense and plaintiff so charges, but the evidence is very plain that each of these persons paid for the stock with his or her own money and that there was and is no agreement for resale to Doan. The money was sent to Doan in the latter part of December, 1919, on his suggestion that the investment was a wise one. If, as he states, and as we must assume, he had no money of his own for further investment it was natural and proper that he should invite those near to him to take over his right to the stock. The fact that these remittances passed through Doan's account and even rested temporarily with him does not change this conclusion.

There remains a balance of 10,000 shares, which the stock book shows was issued on March 22, 1920, to L. E. Doan and reissued April 2, 1920, to L. E. Doan, Jr. Payment was made by defendant Doan's check on March 23, 1920, in the sum of \$14,498.57 and by the application of a credit to Doan on the books of the Company arising from prior transactions, of \$501.43. This \$15,000.00 covered the 10,000 shares in question and the 5000 issued to Gatch and Morris. Of this amount \$10,000.00 was, of course, Doan's own funds. There is considerable testimony aiming to prove that Doan had promised his son an interest in the Doan Oil Company in the summer of 1919, partly out of natural affection and interest and as a reward for meritorious conduct in the National service during the war. This evidence seems to me immaterial. Doan's first duty at this time was to his partner. If Doan had invested this money and caused the issuance of 10,000 shares to his son at the time he [33] promised it to him in the summer of 1919, my conclusion would be that lacking Dyer's consent, such an investment of his money would have been unauthorized and would have to come out of Doan's share of the assets. But it must be remembered that Doan had the right, as Dyer had, to dissolve the partnership at any time. He did so by repudiating it on the morning of March 22, 1920, and his investment the next day was after the termination of the partnership. The point is possibly debatable, but my mature conclusion is that this purchase of shares by Doan was not a

partnership transaction. I conclude that the amount of shares here under discussion, 33,333 shares, did not and do not constitute an asset of the partnership.

SANTA MARIA MATTER.

Doan includes in his statement of account the account of what he calls the Doan Syndicate. This account covers a period beginning November, 1916. The syndicate seems to have consisted of Dyer, Doan, J. F. Lucey, J. F. Carlson, H. Fleishhacker and I. Strassburger. It concerned an oil operation near Santa Maria in California, which apparently was not successful. The proofs satisfactorily show that the balance still due from Dyer to Doan on this account amounts and did amount at the termination of the partnership on March 22, 1920, to \$3553.47.

In the statement of account filed by Dyer, plaintiff does not include any reference to the Santa Maria matter for the reason "That this transaction was a California one and not involved in the partnership. Plaintiff, however, concedes that there is due to Doan about \$3000.00."

Under the decree plaintiff's position that this is not a transaction of this partnership is correct, though not for the reason given. The terms of the partnership as stated in the decree seem broad enough to cover the transactions, if any, in California, [34] but it will be noted that the partnership referred to in the decree is stated to have begun in August, 1918, while the partnership, if it was one, concerning the Santa Maria property

was evidently another and earlier partnership since it began in 1916.

It seems fairly well settled, however, by authority and is certainly in consonance with the procedure of courts of equity that if in this accounting Doan is found to owe any money to Dyer, he may set off an existing debt of Dyer to himself. *Christian & Craft Grocery Co. vs. Hill*, 26 Southern, 149, 152. Since it is conceded that Doan has received such money, for example the dividends on Doan Oil Company stock of April, 1920, the balance stated on the Santa Maria transaction will be allowed him in set off. In other words, it will be charged against Dyer in the amount of \$3553.47 with interest from the termination of the partnership.

CONSIDINE-MARTIN OIL COMPANY.

Plaintiff's contention as regards this matter is that Doan must account for 20,000 shares of the stock of this Company. Defendant's position is that it is not a partnership asset at all, but that in any event, only 15,000 shares should be accounted for. The question as to whether it is a partnership asset is not open to defendant on this accounting, since it is so specifically held in the interlocutory decree.

The facts may be briefly stated. At the time when this Company was being promoted, one Terry, had the opportunity to be one of a syndicate to furnish \$10,000.00 to obtain a lease of certain oil lands in Texas. He did not have the money and obtained from Doan a loan of \$2666.00 under an agreement that he would pay Doan one-half of

any interest he thereafter received. A Company was organized and 30,000 shares were issued to Doan, Terry desiring for reasons of his own that his interest should not appear in his name. [35] Dyer testifies that Doan at one time told him that his share of this was 20,000 shares or two-thirds and Doan denies the conversation. The \$2666.00 was subsequently returned to Doan by the Company so that the shares cost him nothing. The evidence on this subject is not as clear as it might be, but yet is sufficient to show to my satisfaction that the amount to be taken as partnership assets was 15,000 shares. Plaintiff is therefore entitled to one-half of 15,000 of the Considine-Martin Oil Company shares of stock, together with one-half of a dividend of \$150.00 received by Doan, or \$75.00. There must be a supplemental accounting to determine whether further dividends have been received.

OPTION TO GENERAL PETROLEUM CORPORATION.

Under the date of April 16, 1920, an option agreement was signed by the Doan Oil Company as first party, L. E. Doan and Louis Titus as second parties, and the General Petroleum Corporation as third party, whereby, (1) the Doan Oil Company gave the General Petroleum Corporation an option for eight months to purchase its so-called Pine Island property for \$2,000,000.00, payable \$50,000.00 in cash and \$1,950,000.00 in shares of the capital stock of the General Petroleum Corporation taken at \$200.00 per share; or (2)

in the alternative, the General Petroleum Corporation was given the option by Doan and Titus to purchase 50% of the capital stock of the Doan Oil Company at the same price above mentioned for the Pine Island lease. The General Petroleum Corporation agreed to pay to Doan and Titus \$50,000.00 on the execution of the agreement and \$200,000 in their stock at the rate of \$200.00 per share as soon as permission to issue the stock was granted by the State Corporation Commissioner of the State of California. "This payment to apply on the purchase price in the event of the exercise of their option." The third party was obligated to drill three wells [36] on the Pine Island land at their expense. The Doan Oil Company was given the right to declare dividends on its capital stock pending the option, but if the third party exercised its option to purchase 50% of the stock, the amount of dividends declared were deductible from the balance due. All machinery, equipment or structures used in the operation of wells drilled were to become the property of the Doan Oil Company unless the wells were dry holes, in which event it could remove its property unless the removal of casing would endanger the oil sands; the Doan Oil Company to have the right to purchase said casing at one-half the cost in any event. If the wells proved productive and the option took the form of a purchase of 50% of the stock, the Doan Oil Company would pay the General Petroleum Company the cost of drillings and equippings the wells. In October, 1920, the option was ex-

tended until two wells therein referred to were completed in the exercise of reasonable diligence, together with other modifications not material here to be stated. At the time of the hearing in March and April, 1921, this option was still in effect.

The \$50,000 cash mentioned in the agreement was paid by the General Petroleum Corporation to Titus and Doan and, it may be assumed, on April 16, 1920, the date of execution of the agreement. The thousand shares also referred to were issued by the General Petroleum Corporation on May 3, 1920. (Transcript 154) and to the persons directed by Messrs. Doan and Titus (Transcript 152). The cash and stock thus received by Doan and Titus was divided by them among all the stockholders in proportion to their holdings of stock of the Doan Oil Company. (Transcript 45 and following: 131, 138, 139, 152, 154-156.) The proportion would be one-eighth of a dollar to each share of a Doan Oil Company held and one share of General Petroleum stock for every 400 shares of Doan [37] Oil Company stock held. The record shows that this was carried out and that Doan received \$12,500.00 cash and 248 shares of stock of the General Petroleum Corporation. He was entitled to 250 shares, but sold two shares to Mr. Titus at the market price in order to round out the latter's holdings. The question is whether this stock and cash is within the accounting with Dyer.

Defendant contends that it is not. This contention was first based on the theory that it was a transaction by Doan after the termination of the

partnership and therefore entirely outside his scope. This position alone is untenable since the dividends on the Doan Oil Company were likewise declared in April, 1920 and are conceded to be within the accounting as the fruits of partnership assets.

In the brief, defendant's counsel seems to suggest a second theory of defense. It is argued that the consideration for the granting of the option to buy the Pine Island property was the promise by the General Petroleum Corporation to develop these properties at their own expense and the consideration for the agreement of Titus and Doan to sell 50% of the stock of the Company was the payment thereon of \$50,000 cash and 1000 shares of stock. It is further argued that by reason of the stock owned and controlled by them, Titus and Doan were in a position to deliver 200,000 shares. This is a fact since Titus through the East Side Investment Company, which he owned, held 172,000 shares of the Doan stock and 3000 shares in his own name, and Doan, of course, held at least half of 100,000 shares, belonging to the partnership. The effort seems to be to put the transaction in the light of a personal obligation assumed by Titus and Doan to deliver a half interest in the stock; one in which the other stockholders and the corporation itself had no interest and it is accordingly deduced that the \$50,000 and 1000 shares received by [38] Titus and Doan constituted their personal funds, given them in consideration of their option for which they were not accountable

either to the corporation or to the other stockholders.

This construction does not square with the agreement or with the course of action of the parties. The option agreement is peculiar in that two options are contained in it and one payment is made upon the purchase price. It will be noted that the purchase price is identical in the two options involved. No provision is made in words for the application of the first payment in the event that the option was exercised to take the Pine Island property. The \$50,000.00 and the 1000 shares were to apply on "the purchase price" without specifying which of the two purchase prices. Obviously, if the land was bought, Messrs. Titus and Doan would have to account to the Doan Oil Company for the money and shares received on the execution of the agreement. Doubtless because they expected in that event to declare out the \$2,000,000.00 received in the form of a dividend, they proceeded at once to distribute the money and stock received to the other stockholders, or at least to give each stockholder the right to option one-half of his stock (see letter to Gatch, transcript 131, 152). If during the life of this option the General Petroleum Corporation should take over the Pine Island Company, Dyer would benefit by his ownership of 50,000 shares of Doan Oil Company stock and would be entitled to his share of the first payment as well as any subsequent payment if distributed. This leads me to the conclusion that the agreement as to the delivery of stock has been

shown by the practical construction thereof of the parties, as an agreement in behalf of all the stockholders and whether or not the General Petroleum Corporation exercises its option to take the stock or even its option to take the land, it seems to me that this transaction [39] is in the nature of an attempted sale of part of the partnership assets and within the terms of the decree.

It accordingly follows that Doan must account to Dyer for one-half of \$12,500.00 with interest thereon at 7% per annum from April 16, 1920; for one-half of the proceeds of sale of two shares to Titus at \$137.00 per share, with interest from May 3, 1916, and for one-half of 248 shares of stock of the General Petroleum Corporation, namely, 124 shares. He must also account for one-half of all dividends received on the above stock. It is suggested by the evidence that dividends have been received, but the amount thereof was not a matter of examination. Plaintiff's brief demands credit to Dyer in the accounting for one-half of the value of the General Petroleum stock on April 16, 1920, the date of the contract. He goes further and in consonance with his theory as to the second issue of the stock, claims an interest in the General Petroleum stock distributed to those shareholders. The latter claim is, of course, disapproved. In the absence of anything in the brief discussing the theory upon which the value of the stock rather than the stock itself is claimed, I will for the present await enlightenment from the objections to the draft report. It should, of course, be

pointed out that the stock was not received until May 3, 1920.

THE CLAIM AGAINST DYER IN THE MATTER OF NORTH TEXAS SUPPLY COMPANY.

Defendant next claims that Dyer should be charged with one-half of the value of 10,000 shares of the North Texas Supply Company and with one-half of his salary received from that Company. At the time he assumed the presidency of this Company at the request of Doan and Lucey, Dyer expressed his inability to command capital for investment in the supply business, although he had financial backing for the oil business, and his consequent reluctance to [40] subscribe for these shares. His objections seem to have been overcome by a promise of Lucey to carry them for him and it was later proposed that he should have them as a bonus if the business of the company reached certain proportions. In the early part of 1920 it seems to have been proposed by those in control of the Company to vote him this bonus stock, but in May, 1920, Mr. Doan wrote a letter to those in charge protesting against the issuance of the stock to Dyer. The stock was never issued.

The claim thus assumes the aspect, not of a claim to a share in partnership assets, but a claim for damage to the partnership in the nature of a wrong. There seem to be several answers. One is that Doan can hardly complain in view of his protest. The second is that in my reading of the decree, I see no scope for a ruling that the supply

business was within the scope of the partnership. Dyer really went into an outside enterprise as a favor to Doan to advance the partnership interests in so far as it assisted Doan in securing Lucey's adherence to the Doan Oil Company enterprise. For the same reason it seems to me that Dyer need not account for the \$500.00 a month salary received.

INTEREST.

The major part of the dispute between counsel disclosed in the briefs concerns the amount and method of computing interest on Doan's advances to the partnership capital by way of investment in the property of the Doan Oil Company. Doan's method disclosed in his statements, charges interest to a date of computation on every payment made to or for the benefit of the Doan Oil Company and credits the firm with interest on all contributions received from Titus, Lucey, Gatch and Morris. Plaintiff objects that this in effect gives Doan the benefit of interest on money supplied him by these outside sources and in the alternative proposes that a proper method would be to determine from day to day [41] during the acquisition of the Doan Oil Company stock, the balance of Doan's own money shown to have been invested therein. He stops his interest calculations with January 1, 1920, the time when Dyer asked for a statement of account and offered to pay any balance due from him.

In my opinion both parties are clearly wrong. It is a general rule of the law of partnership that in the absence of an agreement that interest should be charged on the advances of partners to firm

capital or on balances to a partner's credit, no such interest will be allowed.

Ferrell vs. Jones, 39 Cal. 655;

Adams vs. Lambard, 80 Cal., 438;

Falkner vs. Hendy, 80 Cal., 636, 103 Cal. 26;

Young vs. Canfield, 33 Cal. App. 343;

Carpenter vs. Hathaway, 87 Cal. 434;

30 Cyc. 441-443; 698-699.

Neither the findings in the interlocutory decree nor the evidence taken in this case disclose anything from which an agreement either express or implied to pay interest on advances to the partnership can be found. Indeed, such evidence as there is indicates a contrary understanding. For example, no interest is charged in the statement pertaining to the Santa Maria matter or the Considine-Martin matter. The letters of January 21st and January 23d naming \$50,000.00 as the amount to be paid Doan by Dyer for one-half the stock obviously took no account of any accrued interest. As regards moneys received by Doan after the dissolution, while he was no longer in the partnership he was a trustee of the partnership property in his hands, under the duty of paying to Dyer upon receipt, his share of any profits or proceeds accruing to one-half the partnership property. He will be charged with interest, therefore, on dividends of the Doan Oil Company from April 12, 1920, the date when they were payable, on the cash payment [42] by the General Petroleum Corporation from April 16, 1920, and on other items of cash on hand at the date of dissolution from March 22, 1920. I charge

no interest on the small dividend received from the Considine-Martin Oil Company in this accounting for the reason that the evidence does not disclose the date of its payment.

As regards money due from Dyer to the partnership, it is true, of course, that he offered to make settlement prior to March 22, 1920, but made no tender. There is sufficient evidence to show that he could have paid \$50,000.00 by the help of either Sanderson and Porter or of the Anglo & London, Paris National Bank of San Francisco. It does not seem equitable that Dyer should be relieved of paying interest on moneys in his hands while on the other hand he is receiving the advantage of dividends and interest thereon coming from the partnership property in Doan's hands. It seems just that interest should be charged on moneys due to Doan from the date of dissolution on the theory that matters should then have been settled.

WELLS vs. BABCOCK, 27 N. W. 375.

METHOD OF SETTLEMENT * * * NE-
CESSITY OF SUPPLEMENTAL AC-
COUNT.

Since no receivership was established by the interlocutory decree and no injunction against transfers of property issued, all the stocks declared to be partnership assets have remained in defendant's control. The evidence shows that he still held them at the time of the Master's hearing in March and April, 1921. Before a final decree can be granted, it must be determined whether the 100,000 shares of the Doan Oil Company, the 15,000 shares

of the Considine-Martin Oil Company, and the 248 shares of the General Petroleum Corporation are still available for division. It must also be shown what, if any, dividends have been collected by Doan [43] from the Doan Oil Company other than the dividend declared on March 26, 1920, dividends other than the \$150.00 collected from the Considine-Martin Oil Company, and dividends collected on the 248 shares of General Petroleum Corporation since their receipt by Doan. If the parties desire it, the Master could reopen the present hearing for this purpose, but it is obvious that the orderly way would be to issue an injunction against transfer to preserve the *status quo* until the hearing was had and acted upon by the Court.

As stated before, I am directed to recommend in what manner and upon what terms and conditions the partnership assets should be divided or sold in accordance with the best interests of the parties. Plaintiff asks a receivership and sale of the entire assets. It is usual in partnership settlements for a receiver to be appointed to take over all firm assets, pay partnership debts from cash accruing or sale of assets and then divide the balance in cash or in kind as may seem best to the Court. Here we may infer that there are no partnership debts. The assets if still on hand, as they were at the time of the hearing, can be divided upon Dyer's making payment of the amount found to be due to Doan. It is obviously an unnecessary hardship upon Doan to have to endure a receivership for his share of the partnership assets.

Defendant's counsel suggests that the shares of stock found to be due to Dyer, in order to protect Dyer's rights pending appeal should be placed in a suitable depository to be designated by the Master, with instructions to deliver the stock to defendant in the event of final decision in his favor, or to deliver the stock to Dyer in the event the decision favors him upon his paying to Doan the amount found to be due. It is, of course, obvious that if this [44] stock should be ordered delivered, suitably endorsed by Doan, to a Receiver, a Master or a trust Company, there would be the additional advantage to Dyer that the impounding of the property would make it sure the dividends hereafter accruing to the stock would be also impounded and that there would be a possibility of converting the same into cash pending further proceedings, subject to the approval of the Court. Other than these suggestions in the briefs, there is little in the way of discussion to enlighten my judgment.

It seems to me, however, that the matter last discussed is not one in which the Court has asked or needs the Master's assistance. It really concerns the method in which a supersedeas can be effected in case an appeal should be taken from the decree of this Court. My conclusion is that all that need be recommended by the Master or provided in the decree is that Doan make delivery to Dyer of one-half the shares declared to be partnership assets upon Dyer's paying to him or

depositing in Court for his benefit the amount found to be due.

There follows my computation of the amounts with interest found to be due from Dyer to Doan and from Doan to Dyer and the resulting balance. Interest has been here calculated to the date of computation, to wit, August 15, 1921. In the final report, the computation will be extended to the date of filing the final report.

PARTNERSHIP ASSETS.

I find that the following are partnership assets in the hands of defendant, L. E. Doan, in which plaintiff, B. T. Dyer, is entitled to a one-half interest upon paying to said Doan the amount herein found to be due from said Dyer to said Doan, namely, 100,000 shares of the Doan Oil Company; 15,000 shares of the Considine-Martin Oil Company; together with a one-half interest in the dividends and other accruals of said partnership [45] property including a one-half interest in 248 shares of the General Petroleum Corporation and a one-half interest in any further or other property paid or to be paid, or transferred to said L. E. Doan, arising out of that certain contract dated April 16, 1920, between the Doan Oil Company, Louis Titus and L. E. Doan and the General Petroleum Corporation.

STATEMENT OF THE ACCOUNT.

On the evidence before me, the accounts of the parties with each other are stated as follows:

DOAN OWES DYER.

One-half dividends on 100,000 shares	
Doan Oil Company.....	\$25,000.00
Interest on above at 7% from 4/12/1920	
to 8/15/1921	2,347.91
One-half dividends Considine-Martin Oil	
Company	75.00
One-half cash from General Petroleum	
Corporation	6,250.00
Interest on above 4/16/1920 to 8/15/1921	582.11
One-half cash from sale 2 shares General	
Petroleum Corporation to Titus at	
\$137.00	137.00
Interest on above from 5/3/1920 to	
8/15/1921	12.28
One-half automobile	1,332.50
Interest on above 3/22/1920 to 8/15/21..	130.11
One-half fee paid Couch by Dyer.....	12.50
Interest on above from 3/22/1920 to	
8/15/1921	1.37

TOTAL, Doan owes Dyer, August 15,
1921 35,880.78

DYER OWES DOAN.

One-half cost 100,000 shares	
Doan Oil Company.....	\$50,000.00
One-half amount received by	
Dyer, Oklahoma lands.....	2,092.50
One-half loss Wehr-Haywood	
investment	300.00
One-half loss Santa Maria Syn-	
dicate	3,553.47
	<hr/>
Total.....	55,945.97
Interest on above 3/22/20 to	
8/15/21 at 7%.....	5,471.80
	<hr/>
TOTAL, Dyer owes Doan,	
8/15/1921	\$61,417.77
Doan owes Dyer Aug. 15, 1921..	35,880.78
	<hr/>

Balance, Dyer owes Doan, Aug. 15, 1921..\$25,536.99

I accordingly find that on the evidence now before me, Dyer should pay to Doan as a consideration for a transfer of a one-half interest in the partnership assets, the sum of \$25,536.99 together with interest thereon from August 15, 1921, until the same is paid.

CONCLUSION.

I recommend:

1. That in lieu of a receiver and in order to stabilize the assets so that the accounting and the decree may not be impaired by transfers, the Court issue its injunction pending final decree, prohibit-

ing defendant, L. E. Doan, from transferring or encumbering more than one-half the said partnership assets; and that said injunction be made permanent in said final decree until said decree is carried out.

2. That a supplemental accounting be had immediately, after service of said temporary injunction directing the Master to find [47] what partnership assets are then on hand in the possession or control of said L. E. Doan and what transfers, if any, have been made, what dividends have been received by said Doan, or have been declared on the shares of Doan Oil Company stock since March, 1920; on the shares of the Considine-Martin Oil Company; on the shares of the General Petroleum Corporation since April 16, 1920, and generally to make such inquiries as may be necessary to bring said accounting as near as may be to the date of the final decree.

3. That in the final decree said defendant be ordered to deliver to said plaintiff duly and properly endorsed so as to entitle the same to transfer on the books of the several corporations, certificates of stock for \$50,000 shares of the Doan Oil Company, 7500 shares of the Considine-Martin Oil Company, 124 shares of the General Petroleum Corporation, or as may otherwise be found on the coming in of the Master's report on a second reference. Provided, however, that said plaintiff shall within ten days after said final decree pay to said L. E. Doan in consideration of said transfers, or to the Clerk of the Court for his account, the

sum found due from said Dyer to said Doan on this accounting or on a further accounting, with interest at the rate of 7% per annum from the date of final decree, interest to cease from date of payment or said deposit with the Clerk.

The foregoing is announced as my draft report herein this 18th day of August, 1921, and the parties may have ten days from date hereof within which to file objections to said report.

H. M. WRIGHT,
Special Master. [48]

Supplemental Report.

On August 18, 1921, the foregoing was announced as my draft report herein and mailed to the respective counsel and counsel were given ten days within which to file objections. Copy of the letter of notification is annexed hereto. The time for filing objections was from time to time extended and the defendant's objections were duly filed on September 13, 1921 and plaintiff's objections were duly filed on September 15, 1921. Said objections of plaintiff and of defendant are herewith separately returned.

Said objections have been carefully considered and each and all the objections of each of the parties are overruled.

The draft report will therefore stand unchanged except for the correction of certain errors not embodied in the objections and except also for the carrying of interest to the date of the final report. The errors referred to are of two kinds: The first

are stenographic errors of transposition of figures, corrected as follows:

Page 28, line 17, \$528.11 is corrected to \$582.11; and page 29, line 7, the figures \$55954.97 corrected to \$55,945.97. The above errors made no change in the totals.

The second class of errors were due to the Master's oversight in carrying out on page 28, the time, "one-half cash from sale 2 shares General Petroleum Corporation to Titus at \$147.00," which was carried out at \$274.00 instead of \$137.00. The interest on the above at page 28, line 20 should, accordingly, read \$12.28 instead of \$24.57. These corrections have required correction of the totals as follows: Page 28, line 27, \$36,030.07 to \$35,880.78; and page 29, line 11, the same correction; and on line 12, \$25,387.70 changed to \$25,536.99; and on page 29, line 16, the same correction [49] as the last one mentioned. The above being changes to correct errors in the draft report as it should have read, I have indicated the same by making the above corrections on the face of the draft report on pages 28 and 29 respectively, in red ink.

It now remains to carry the statement of account on pages 28 and 29 forward to the date of this final report, September 19, 1921, by adding the interest accruing between August 15, 1921 and September 19, 1921. It will be recalled that on page 27, lines 19 to 23, I stated that the calculation of interest in the draft report was temporary and would be extended to the date of the final report. Thus extended, the matter in the draft report beginning

page 28, line 7 and ending page 29, line 18 is now restated to read as follows:

STATEMENT OF THE ACCOUNT.

On the evidence before me, the accounts of the parties with each other are stated as follows:

DOAN OWES DYER.

One-half dividends on 100,000 shares	
Doan Oil Company	\$25,000.00
Interest on above at 7% from 4/12/1920	
to 9/19/1921	2,513.18
One-half dividends Considine-Martin Oil	
Company	75.00
One-half cash from General Petroleum	
Corporation	6,250.00
Interest on above from 4/16/1920 to	
9/19/1921	623.41
One-half cash from sale 2 shares General	
Petroleum Corporation to Titus at	
\$137.00	137.00
Interest on above from 5/3/1920 to	
9/19/1920	14.39
One-half automobile	1,332.50
Interest on above 3/22/1920 to 9/19/	
1921	138.88
<hr/>	
Forward	\$36,084.36

Forwarded	\$36,084.36
One-half fee paid Couch by Dyer	12.50
Interest on above 3/22/1920 to 9/19/1921	1.45

TOTAL Doan owes Dyer, September
19, 1921\$36,098.31

DYER OWES DOAN.

One-half cost 100,000 shares Doan Oil Company	\$50,000.00
One-half amount received by Dyer Okla- homa lands	2,092.50
One-half loss, Wehr-Haywood invest- ment	300.00
One-half loss, Santa Maria Syndicate ...	3,553.47

Total\$55,945.97

Interest on above, 3/22/1920 to 9/19/1921
at 7% 5,841.63

TOTAL Dyer owes Doan, September
19, 1921\$61,787.60

Doan owes Dyer, September 19, 1921 ... 36,098.31

BALANCE Dyer owes Doan, Sep-
tember 19, 1921\$25,689.29

I accordingly find that on the evidence now be-
fore me, Dyer should pay to Doan as a consideration
for a transfer of a one-half interest in the partner-
ship assets, the sum of \$25,689.29, together with

interest thereon from September 19, 1921 at the rate of 7% per annum until the same is paid.

In all other respects the findings and conclusions in the foregoing draft report are left unchanged.

The said draft report with this Supplemental Report is accordingly settled, signed and filed as my final report herein and the parties notified by mail of said action on this 19th day of September, 1921.

H. M. WRIGHT,
Special Master.

[Endorsed]: Filed Sep. 19, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [51]

In the District Court of the United States, in and for the Northern District of California, Southern Division.

No. 543.—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Defendant's Exceptions to Special Master's Report on Accounting.

Defendant respectfully submits the following exceptions to the Special Master's Report on Accounting in the above-entitled matter on the following grounds:

(1) Exception is made to the report in so far as it holds that 7,000 shares of the stock of Doan Oil Company, in addition to the 93,000 shares originally paid for by defendant, are partnership assets, and that plaintiff is entitled to one-half thereof in accounting to defendant for \$3,500.00 with interest; or that plaintiff is entitled to any dividends which have accrued thereon and been received by defendant.

Withdrawn.

(2) Exception is made to the report in the particular that it does not require plaintiff to account to defendant for one-half of the stock of the North Texas Supply Company, which the evidence shows plaintiff agreed to subscribed and pay for on behalf of the "partnership," and one-half of the salary which plaintiff received from the North Texas Supply Company and from [52] the American Oil Engineering Company.

(3) Exception is made to the report in so far as it undertakes to interpret the decree entered by the Court herein as holding that the stock of the Considine-Martin Oil Company is a partnership asset and in so far as it required defendant to account to plaintiff for one-half of the 15,000 shares acquired by defendant in this transaction; or that plaintiff is entitled to any dividends which have accrued thereon and been received by defendant.

Withdrawn.

(4) Exception is made to the report in so far as it undertakes to interpret the decree entered by the Court herein as holding that the shares

of the General Petroleum Company, or any moneys derived from this transaction by defendant, are a part of the partnership assets; or that plaintiff is entitled to any dividends which have accrued thereon and been received by defendant, and in holding that plaintiff is entitled to one-half of the moneys received by defendant in this transaction and one-half of the proceeds of the sale of two shares of the stock of the General Petroleum Company to Louis Titus, and that plaintiff is entitled to one-half of the 248 shares of stock of this company or any other interest therein.

(5) Exception is made to the report in the particular that it does not allow defendant interest upon all moneys advanced by him from the date said moneys were advanced, as shown by defendant's account heretofore filed with the Master, to date.

(6) Exception is made to the report in the above particulars upon the further grounds that said findings to which exception has been made above are against the evidence and against law, and that said findings to which exception is made [53] as above specified are not supported by the evidence and the law.

WHEREFORE, defendant respectfully submits that the report should be amended in the particulars above specified.

C. W. DURBROW, and
JOHN BREUNER, Jr.,
Attorneys for Defendant.

Receipt of a copy of the within exceptions is hereby admitted this 7th day of October, 1921.

W. H. METSON,

S. C. DREW,

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 7, 1921. Walter B. Maling, Clerk. [54]

(Title of Court and Cause.)

**Plaintiff's Exceptions to Special Master's Report
on Accounting.**

Comes now the plaintiff and respectfully presents and submits the following exceptions to the Special Master's Report on Accounting heretofore filed in the above-entitled court in the said cause:

I.

The plaintiff excepts to the said report, and to the findings of fact made by the Special Master, with reference to the second issue of the 33,333 shares of the capital stock of the Doan Oil Company.

II.

The plaintiff excepts to the said report, and to the findings of fact made by the Special Master, wherein it is determined and found that the plaintiff is not entitled to an accounting from the defendant with reference to the second issue of the 33,333 shares of the capital stock of the Doan Oil Company.

The portions of the said Report of the Special

Master to which the foregoing exceptions are directed are set forth therein commencing at line 16 on page 12 of the Report, and concluding with line 12 on page 16 thereof.

The foregoing exceptions are based upon the ground that the said portion of the said Report, and the findings therein set forth, are not supported by law, or by the evidence adduced upon the hearing had before the Special Master.

WHEREFORE, the plaintiff respectfully submits that the said Report should be amended and corrected.

W. H. METSON,
R. G. HUDSON,
Attorneys for Plaintiff. [55]

Receipt of copy hereof admitted Oct. 4th, 1921.
C. W. DURBROW and
JOHN BREUNER, Jr.,
Attorneys for Defendant.

[Endorsed]: Filed Oct. 10, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [56]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

W. H. METSON, Esq., Attorney for Plaintiff.

C. W. DURBROW, Esq., and JOHN BREUNER,

Jr., Attorneys for Defendant.

**(Memorandum Opinion and Order for Decree on
Exceptions to Report of Special Master.)**

RUDKIN, District Judge.—I have carefully examined the report of the Special Master in this case in the light of the testimony, the exceptions taken and the arguments of counsel and can add but little to the able arguments submitted by the Master in support of his conclusions. In one important respect, however, I feel constrained to differ with the Master. That is in the disposition to be made of the increased stock issued and sold by the Doan Oil Company. Prior to November 10th, 1919, the outstanding stock of that Company consisted of 300,000 shares of the par value of \$1.00 each, 100,000 of which was the property of the plaintiff and defendant under their partnership agreement as found by the Court. On the above date the Board of Directors of the Corporation offered an additional 100,000 shares of stock, of the par value of \$1.00 per share, for sale, at the price of \$1.00 per share, to be paid for, in [57] two equal installments, on or before December 15th 1919, and January, 1920. This additional stock was offered to the stockholders in proportion to their then holdings, 33,333 shares being allotted to the defendant Doan. It was further provided that if any stockholder failed to subscribe and pay for all or any portion of the stock thus allotted the same

should be subject to the further order of the board. The plaintiff had no notice of this resolution and was given no opportunity to subscribe or pay for the additional stock. The effect of this increase upon the rights of the plaintiff becomes at once apparent. His interest in the Corporation was reduced from a one-sixth interest to a one-eighth interest and his right to participate in future dividends was curtailed in the same ratio. The only benefit the plaintiff could derive from the increase was the addition to the capital assets of the corporation. And if the capital stock of the company was worth more than \$1.00 per share at that time his loss would necessarily exceed his gain. The Master did not deem it necessary to make a finding as to the value of the stock at the time of the second issue, as the assets of the corporation are susceptible of a division in kind, but he expressed the opinion that the stock was worth considerably more than \$1.00 per share, and found that the right to purchase the additional stock was a valuable one and was a partnership asset. The opinion thus expressed and the finding as to the value of the preferred right is fully supported by the testimony. On March 20th 1920, two days before the repudiation of the partnership agreement by the defendant, a dividend of \$200,000.00 on the 400,000 shares was declared, and on the 16th of April 1920, the General Petroleum Corporation was [58] given an 8 months' option on a portion of the property of the Doan Oil Company, or in the alternative on one-half of the capital stock

of that Company, for \$2,000,000.00, payable \$50,000.00 in cash and \$1,950,000.00 in stock of the Petroleum Corporation, at the rate of \$200.00 per share. The \$50,000.00 in cash and 1000 shares of stock of the Petroleum Corporation has already been paid or delivered under the option. From these facts it must be apparent that the right to purchase the increased stock at \$1.00 per share was a valuable one and was a valuable asset of the copartnership. The defendant Doan as a trustee of this stock will not be permitted in equity to derive a profit from his trust, nor will his family or friends, as his nominees, or otherwise. The reason given by the Master for a contrary ruling, namely, that the plaintiff did not have the means to pay for this additional stock is not convincing and does not appeal to me. If the right was a valuable one, as it unquestionably was, little difficulty should be encountered in making the necessary financial arrangements to take up the stock. The 33,333 shares in question will, therefore, be disposed of and divided in the same manner and subject to the same terms and conditions as the original. In all other respects the report of the Master is confirmed for the reasons stated by him, and the exceptions on the part of the defendant are overruled.

The fee of the Special Master will be fixed, and allowed, in the sum of \$3,000.00. A question has arisen as to the payment of this fee in the first instance. Upon this question there is a conflict of authority, some cases holding that the fee should

be paid by the plaintiff, others that it should be paid by the defendant, and still others [59] it should be divided. A partnership of this kind is usually wound up through the appointment of a receiver, and had that course been followed in this case the fee would doubtless be ordered paid out of the funds in his hands. And inasmuch as all the partnership property is still under the control of the defendant, I would order the entire fee paid by him were it not for the fact that the plaintiff is found indebted to the defendant in the sum of \$25,000.00, subject to a further accounting from the defendant since the date of the report, and that sum will, or may be materially increased by the modification here made in the report of the Master. Under the circumstances, therefore, the fee will be divided equally between the parties, each to pay one-half within a time to be fixed by the Court. The question of the form of the final decree was also discussed. A receiver must be appointed to take charge of all the property and assets of the copartnership, unless the necessity therefor is obviated by the imposition of the following terms and conditions with which the defendant must comply:

If the defendant, on or before a date to be fixed by the Court, will deposit with the Clerk of this Court one-half of all corporate stock owned by the copartnership to be issued directly to the plaintiff, or properly assigned to him, no receivership is deemed necessary. Upon the deposit of this stock by the defendant the plaintiff will, on or before a date to be fixed, pay to the Clerk of this Court, or to

his counsel for the use of the defendant, such sum as may be found due from the plaintiff to the defendant, less the cost of this suit as taxed, and upon such payment the Clerk will deliver the stock so deposited to the plaintiff [60] or to his counsel. The plaintiff will recover his costs, and the Court reserves jurisdiction to make such further order or decree as may be necessary in the premises.

It was suggested in the argument that it would be an injustice to the plaintiff to tie up his half of the stock while the defendant is at liberty to use his half as he chooses. But if it be an injustice, it is one that cannot be avoided. Manifestly the Court cannot give the plaintiff full control over his portion of the stock, pending an appeal and it would avail the plaintiff nothing to deprive the defendant of the control of his own portion. Such a deprivation would only be retribution, but retribution is not equity. If it should become necessary, pending an appeal, to vote the stock awarded to the plaintiff in order to protect his rights it might be possible, or feasible, to appoint a receiver for that purpose. But whether a receiver, so appointed, would have authority to vote the stock under local laws I am not advised. Unless the parties agree upon such amounts, if any, as the defendant has received since the last accounting, it will be necessary to refer the case to bring the accounting down to date. I might further say that to avoid tying up a large sum of money for a considerable time, if the defendant prosecutes an appeal herein, the time within which the defendant is required to pay into Court

the sum found due the defendant will be extended until 10 days after the mandate on appeal is filed with the Clerk of this Court.

Let a decree be submitted in accordance herewith. December 2d, 1921.

[Endorsed]: Filed Dec. 2, 1921. Walter B. Maling, Clerk. [61]

At a stated term, to wit, the November term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the second day of December, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable FRANK H. RUDKIN, District Judge for the Eastern District of Washington, designated to hold and holding this court.

No. 543—EQUITY.

B. T. DYER

vs.

L. E. DOAN

(Order Granting Plaintiff's Exceptions and Overruling Defendant's Exceptions, Etc.)

Plaintiff's exceptions to the Special Master's Report and defendant's exceptions to the Special Master's Report, heretofore argued and submitted, being now fully considered and the Court having filed its memorandum opinion, it is ordered that plain-

tiff's exceptions be and they are hereby granted; that defendant's exceptions be and they are hereby overruled and that in all other respects the report of the Master stand confirmed.

Ordered that the fee of the Special Master be fixed in the sum of \$3000.00 each party to pay one-half. [62]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Decree.

This cause came on to be further heard at this time upon the exceptions taken by the complainant to the report of the Special Master and upon the exceptions taken by the defendant to the Report of the Special Master (which said report and exceptions had heretofore been filed herein) and the exceptions of the respective parties having been argued by counsel and thereupon upon consideration thereof,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

That at all the times herein mentioned the Doan

Oil Company is and was a corporation organized and existing under the laws of the State of Louisiana.

That prior to and on November 10, 1919, the outstanding stock of the Doan Oil Company amounted to three hundred thousand (300,000) shares of the par value of One dollar (\$1.00) each; that one hundred thousand (100,000) of these shares was the property of the plaintiff and defendant under their partnership agreement as heretofore found by this Court in this cause, and that the cost thereof was one (\$1.00) dollar per share; that afterwards and on the said 10th day of November, 1919, the Board of Directors of the Doan Oil Company offered an additional [63] one hundred thousand (100,000) shares of its capital stock of the par value of one dollar (\$1.00) per share for sale at the price of one dollar (\$1.00) per share, to be paid for in two equal installments on or before December 15, 1919, and January, 1920. This additional stock (100,000 shares) was offered to the stockholders of the Doan Oil Company in proportion to their then holdings on November 10th, 1919; that under this offer of additional stock thirty-three thousand three hundred thirty-three (33,333) shares was allotted to the defendant Doan and said allotment of thirty-three thousand three hundred thirty-three (33,333) shares was after said November 10th, 1920, fully taken up either by said defendant or by his nominees at one (\$1.00) dollar per share; that this right to purchase said thirty-three thousand three hundred thirty-three (33,333)

shares of said stock was a valuable asset to the said copartnership.

IT IS THEREFORE ADJUDGED that the defendant Doan account to the plaintiff Dyer for said thirty-three thousand three hundred thirty-three (33,333) shares of stock in the Doan Oil Company, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this thirty-three thousand three hundred thirty-three (33,333) shares of stock in the Doan Oil Company be disposed of and divided in the same manner and subject to the same terms and conditions as the original issue to defendant Doan of the said one hundred thousand (100,000) shares of the Doan Oil Company stock which has been and now is determined to be the property of the plaintiff and defendant, and that plaintiff be and he hereby is adjudged to be since March 22d, 1920, the owner of one-half of one hundred and thirty-three thousand three hundred and thirty-three shares of the capital stock of the Doan Oil Company, to wit, sixty-six thousand six hundred and sixty-six and one-half [64] (66,666½) shares.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in respect to this allotment to defendant Doan under said resolution of November 10, 1919, of thirty-three thousand three hundred thirty-three (33,333) shares of stock of the Doan Oil Company, the exception of the plaintiff to the report of the Special Master is hereby sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in all other respects the re-

port of the Special Master be and the same is hereby confirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that subsequent to the acquirement of said Doan Oil Company stock, dividends were paid thereon directly by said Doan Oil Company, to wit: cash dividends, prior to the filing of report of the Special Master in this court in the sum of fifty-cents per share on each share and that other dividends were paid thereon indirectly at the hands of Louis Titus and L. E. Doan by dividing up among the four hundred thousand (400,000) total shares issued of the Doan Oil Company the sum of fifty thousand (\$50,000.00) dollars, and also one thousand (1,000) shares of the capital stock of the General Petroleum Corporation, and that the plaintiff is entitled to his *pro rata* thereof, to wit: one-sixth, the same being cash eight thousand three hundred thirty three and $33/100$ (\$8,333.33) dollars, and also one hundred and sixty-six and two-thirds ($166\frac{2}{3}$) shares of the General Petroleum Corporation. That one and one-half of said General Petroleum Corporation shares have been accounted for by defendant and that plaintiff is entitled to one hundred and sixty-five and one-half ($165\frac{1}{2}$) shares of the General Petroleum Corporation. That plaintiff is entitled to credit for all dividends received by defendant since April 16, 1920, on his proportion of said General Petroleum Corporation [65] shares of stock, to wit: one hundred sixty-five and one-half ($165\frac{1}{2}$) shares, and all future dividends paid by said General Petroleum Corporation thereon.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant did prior to the 22d day of March, 1920, receive fifteen thousand (15,000) shares of the capital stock of that certain corporation named Considine-Martin Oil Company.

That said fifteen thousand (15,000) shares of Considine-Martin Oil Company are and were at all times mentioned a partnership asset and that plaintiff is entitled to seventy-five hundred (7500) shares thereof and to all dividends declared thereon and paid to defendant since defendant received the same,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a receiver be appointed to take charge of the property and assets of the copartnership unless on or before the 5th day of January, 1922, the said defendant shall deposit with the Clerk of this Court, one-half of one hundred thirty-three thousand three hundred thirty-three (133,333) shares of the corporation stock of the Doan Oil Company and one-half of the corporate shares of that certain corporation commonly known and designated as the Considine-Martin Oil Company, to wit: seventy-five hundred (7500) shares, and also one hundred sixty-five and one-half ($165\frac{1}{2}$) shares of the corporate stock of that certain corporation commonly known and designated as the General Petroleum Corporation. Each of said sixty-six thousand six hundred sixty-six and one-half ($66,666\frac{1}{2}$) shares of Doan Oil Company's stock, and each and every of said shares of Considine-Martin Oil Company stock, and each and every of said shares of the General Petroleum Corporation stock, to be is-

sued in the name of B. T. Dyer, or properly endorsed so that the same can be assigned to and transferred [66] to him.

Should said stock be so deposited with the Clerk of this Court within said time, no receiver will at this time be appointed.

Upon the deposit of this stock by the defendant, IT IS ORDERED that the plaintiff on or before the 15th day of January, 1922, pay to the Clerk of this Court, or to counsel for the defendant, for the use of the defendant, the sum of \$12,645.90, together with interest thereon at the rate of seven per cent (7%) per year from the 21st day of December, 1921, less plaintiff's costs in this suit, as taxed; that upon such payment being made, the Clerk will deliver the stock so deposited to plaintiff, or to plaintiff's counsel, except as provided in the paragraph next succeeding.

Provided, however, that the said defendant shall, ten days prior to the said 15th day of January, 1922, file with the Clerk of this Court a waiver of appeal from the decree herein. And provided further, that if the defendant appeals from the decrees herein, or either of them, then, in that event, the time of the payment by plaintiff of the above sum found due from plaintiff to defendant shall be and is hereby extended until ten days after the mandate on appeal in this suit is filed with the Clerk of this Court, or ten days after waiver of appeal has been filed. And provided further that should the defendant so appeal, then, in that event, it is ordered that the Clerk do not deliver the stock so deposited

to plaintiff or to plaintiff's counsel until ten days after the mandate on appeal in this suit is filed with the clerk of this Court, and then only upon payment of the amount due from plaintiff to defendant to wit: the sum of \$12,645.90 less costs. And provided further that should the defendant so appeal, the plaintiff shall not be required to pay to defendant any interest [67] on said sum of \$12,645.90 less costs for the period of time commencing with the filing of notice of such appeal, and ending with the filing of the mandate on appeal with the Clerk of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event that said defendant has disposed of any of said shares of stock, which he is by this decree directed to deliver to the Clerk of this Court, or is unable to deposit them as directed, that a referee to the Special Master H. M. Wright be and the same is hereby ordered for the purpose of taking testimony and fixing the value of the shares of stock not so deposited by said defendant with the Clerk of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff recover his costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED and the Court hereby reserves jurisdiction to make such further order or decree as may be necessary in the premises.

Dated, December 21st, 1921.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsed]: Filed and entered December 21, 1921. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [68]

(Title of Court and Cause.)

Memorandum Opinion on Motion to Retax Costs.

RUDKIN, District Judge.—This is a suit to establish a partnership and for an accounting. Every issue in the case from beginning to end has been contested by defendant and all expenses incurred and disbursements made during the progress of the trial are directly traceable to the controversy between the immediate parties to the suit. After the Court had fixed the rights of the parties by interlocutory decree the case was referred to a Special Master to take an accounting between the parties and upon the filing of his report the Master made application to the Court to fix his compensation. Upon the hearing of that application a question arose as to which of the parties should advance the fees or pay the charges in the first instance. The Court decreed that one-half of such fees or charges should be advanced or paid by each of the parties. At that time the Court was not concerned with the ultimate question of costs and the parties well understood this. Nevertheless when the plaintiff filed his cost bill including an item of Fifteen Hundred Dollars paid by him as his portion of the Master's fee the Clerk's office rejected the claim on the erroneous assumption that the matter had already been determined otherwise by the Court.

In the absence of some controlling equity the rule that the prevailing party is entitled to costs is as absolute in equity as at law and I see no conceivable reason why there should be a departure from that rule in this case. [69]

The motion to retax is therefore granted.

[Endorsed]: Filed Dec. 24, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [70]

At a stated term, to wit, the November term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Saturday, the 24th day of December, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable FRANK H. RUDKIN, District Judge for the Eastern District of Washington, designated to hold and holding this Court.

No. 543—EQUITY.

B. T. DYER

vs.

L. E. DOAN.

(Order Granting Plaintiff's Motion to Retax Costs.)

Plaintiff's motion to retax costs heretofore heard and submitted to the Court, being fully considered and the Court having filed its memorandum opinion herein, it is ordered that the said motion to retax costs be and the same is hereby granted. [71]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs

L. E. DOAN,

Defendant.

Statement of Evidence.

BE IT REMEMBERED that the above-entitled cause came on regularly for trial before the above-entitled court on the 2d day of December, 1920, Honorable Frank H. Rudkin, District Judge, presiding, the complainant being represented by W. H. Metson, Esq., and R. G. Hudson, Esq., his solicitors, and the defendant being represented by C. W. Durbrow, Esq., and John Breuner, Jr., Esq., his solicitors, and thereupon the following proceedings were had and testimony taken, and exhibits received, and none other:

Testimony of H. F. Berry, for Complainant.

H. F. BERRY, called as a witness for the complainant, testified as follows:

I reside in San Francisco; my business is mining and oil business. I have been in business somewhat over all of this coast for fifteen or twenty years. I know B. T. Dyer, the plaintiff, and L. E. Doan, the defendant. I met Mr. Doan in Shreveport,

(Testimony of H. F. Berry.)

[72] Louisiana, about January 18, 1920, and between January 20th and January 25th met him in his office in Shreveport. I had conversation with Mr. Doan about that time. Between the 20th and 25th Mr. Keller and I went up to his office in Shreveport upon Doan's invitation and he showed us maps and talked over the oil business. I said, "Where is Mr. Dyer?" He said, "He is at Wichita Falls running the supply house there." I said, "Is Dyer interested with you here in your business?" He said, "He is, and I will make him a lot of money." I left Shreveport, went to Houston and returned to Shreveport after a few days and again saw Doan at his office in Shreveport. At that time Mr. Jacob Berger and my brother, C. J. Berry, were present. On this occasion Mr. Berger asked Mr. Doan if Mr. Dyer was his partner there in the oil business, and he said he was.

Cross-examination.

What was exactly said to Mr. Berger at the time to which I last referred was: Mr. Berger asked him if he was a partner, if Dyer was his partner in the oil business, and he said "Yes"; that was the entire conversation relating to Dyer.

Testimony of F. L. Keller, for Complainant.

F. L. KELLER, called as a witness for the complainant, testified as follows:

I reside in San Francisco; my business is the oil business; I know B. T. Dyer and L. E. Doan. I

(Testimony of F. L. Keller.)

remember being in Shreveport, Louisiana, about the first of the year 1920. Upon that occasion I met Mr. Doan about the 18th of January at the railroad station in Shreveport. Thereafter I met Mr. Doan in his office in Shreveport. Mr. Frank Berry was present upon that occasion. We were [73] talking the oil business over and Mr. Berry asked Mr. Doan where Tom Dyer was; he said, "He is up in Wichita Falls, running the supply house." He said, "Well is he in with you here in the oil business?" He said, "Yes, and I am going to make him a lot of money."

Cross-examination.

I have known Mr. Dyer about ten or twelve years; I have had no business transactions with him; just a general acquaintance in the oil business; that is, through the oil fields. I am not interested in any venture with him.

Testimony of Jacob Berger, for Complainant.

JACOB BERGER, called as a witness for the complainant, testified as follows:

I reside in San Francisco and am in the oil business. I know L. E. Doan, the defendant; I first met him last year in C. J. Berry's office, a little over a year ago, in San Francisco. I have known B. T. Dyer for twenty years, and upon friendly terms with him. The circumstances under which I met Mr. Doan in Berry's office in San Francisco were as follows: Mr. Doan brought maps up to C. J. Berry's office to make us familiar with

(Testimony of Jacob Berger.)

the Louisiana oil fields. I am interested with Mr. Berry in the oil business. Well, we were looking the maps over, and I asked him if Mr. Dyer was interested in the oil business with him and he said he was. The maps were of the Bull Bayou field, which is a few miles out of Shreveport. I saw Mr. Doan again in his office in Shreveport and upon that occasion C. J. Berry and H. F. Berry were present. At that time we were making inquiry as regards geologists and drillers in his office there, and while that conversation took [74] place he was telling us what wonderful production he had in the Bull Bayou field; I asked him if Mr. Dyer was interested in this particular production and he said he was.

Cross-examination.

The exact conversation relating to Mr. Dyer on this last occasion was that I asked Mr. Doan if Mr. Dyer was interested in that particular production he had in the Bull Bayou field and he said he was. That was all the conversation, so far as Mr. Dyer is concerned, and that was the exact language, so far as I am able to remember. It was in the end part of 1919 that I saw Mr. Doan in San Francisco. I do not remember the month; it was about a couple of months before I went to Louisiana; I was in Louisiana in January, 1920.

Redirect Examination.

For the purpose of fixing the time when the conversation occurred in San Francisco I remember

(Testimony of F. E. Couch.)

Mr. Doan stated that he was up here on account of his mother's illness. During the conversation in January at Shreveport Mr. Doan told us he had considerable production and he was ready to bring in one more big well at the time I was in his office; the amount of production he had I don't remember, but I know he had considerable production.

Testimony of F. E. Couch, for Complainant.

F. E. COUCH, called as a witness for the complainant testified as follows:

I know L. E. Doan; I met him in the early part of 1919. I know Mr. Dyer; I met him in 1918; I met both in Fort Worth, Texas. I reside in Fort Worth and am in the oil and land business. [75] I have some associates in Fort Worth by the name of E. G. Rall, a grainman, and Mr. Tom B. Owen, a cottonman. I have lived in Fort Worth about ten years. I made a trip with Mr. L. E. Doan; we went to Wichita Falls in the early part of May, 1919, to look over some property in what is known as the Northwest Extension at the Burke-Burnett field; we drove up there by automobile in the early part of May to inspect the property and came back to Fort Worth the same day. The distance from town to town is 115 miles. I had not known Mr. Doan very long at that time; he was living at the Fort Worth Club; I know that because I was up there quite frequently, in the room; the room was Mr. Dyer and Mr. Doan's room, No. 407 in the Club Building; they had a

(Testimony of F. E. Couch.)

double room and roomed together. After that I was with Mr. Doan quite frequently in the room talking about several deals at different times. After the automobile trip with Mr. Doan I was with Mr. Dyer a number of times afterwards in Wichita Falls. I remember the purchase of five acres in the Burke-Burnett field and commonly spoken of as the Lamb piece; the circumstances of the purchase were as follows: Mr. Dyer and I went up to Wichita Falls after Mr. Doan and I had been up there; Mr. Doan said whatever we did was perfectly satisfactory to him; after we got up to Wichita Falls Mr. Doan had wired Mr. Dyer, as I understood it, about this piece, and also talked with him over the telephone; and if I remember the exact date, it was about the 7th of May, Mr. Dyer went out to this field with the owner of this tract to look it over and I stayed at Wichita Falls to look after some other matters, and did not see Mr. Dyer until afterwards in the Hotel—we had a room together—and he told me he had purchased these five acres, Mr. Dyer did. Up to the time that he told me he had purchased the five acres I had not been on them with either [76] Mr Doan or Mr. Dyer. I did not know anything about any well being drilled in that neighborhood until after Mr. Dyer and I went out the next morning, and after he had made this purchase, to see this piece of land; they were drilling a well right close to it. The parties who were drilling this well adjacent to this tract claimed that they

(Testimony of F. E. Couch.)

were not deep enough to get the pay. The morning that we went to the Lamb tract, after Mr. Dyer had purchased it, they were drilling this well. I did not tell Mr. Doan that I had told Mr. Dyer before Dyer purchased that well that there was an offset well adjacent to the Lamb tract in salt water. At the time I was there with Mr. Dyer I made a purchase of some acreage right across the River from this Extension, in Tillman County, Oklahoma. The River makes a bend there; it was the dividing line between Oklahoma and Texas. I told Dyer that if he and Doan wanted to share in the purchase of this, it was all right with me. In one of his conversations over the long distance with Doan in Fort Worth he told him what I said, and he said it was perfectly all right. There were supposed to have been 80 acres in that tract of land, but it was a little shy; it measured a little over 75. Title to that acreage was taken in the name of Mr. Tom B. Owens, my associate. It cost \$125 an acre, or a total of between \$8,000 and \$9,000. When I made the purchase that night, Mr. Dyer and I were out in front of the hotel with the owner of this lease and I gave him \$1,000 as earnest money, until the title was examined; I turned the papers over to Mr. Dyer; I went back to Fort Worth that night; I told him to take them to Judge Kay, an attorney in Wichita Falls, and have him examine the title, and he did so. After I went back to Fort Worth Doan was going to Wichita Falls and he told me that if the title was all right he would pay the

(Testimony of F. E. Couch.)

balance and when he came back to Fort Worth I could give him my [77] part of it, which was half, and I did so. My side paid one-half and Doan and Dyer's side paid one-half, which was in the neighborhood of \$4,000, or a little over, for each side. The land was sold afterwards. In the early part of June forty acres were sold and I made out a check to Doan for their half for \$5,400, less \$12.50 attorney's fees, making net \$5,387.50. The land was sold in three pieces.

Mr. METSON.—Q. I show you a letter and ask if you can identify it.

A. Yes, this is from Doan to me.

Mr. METSON.—We offer this letter in evidence as Plaintiff's Exhibit 1.

Plaintiff's Exhibit No. 1.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La., December 17, 1919.

Mr. F. E. Couch,
Flatiron Building,
Fort Worth, Texas.

My dear Couch:

I received a letter from Mr. Dyer stating that you had an offer of three hundred dollars per acre for our Tillman County Acreage. Please use your own best judgment, and if you think it advisable at any time to sell, I will be perfectly satisfied.

I notice by the daily reports all kinds of rumors in regard to Tillman County. I have not seen any

(Testimony of F. E. Couch.)

thing definite about any wells coming in, so I leave the matter entirely in your hands.

With kindest personal regards, I remain

Very truly yours,

L. E. DOAN.

LED/K. [78]

Q. I will show you another paper and ask you whether or not you can identify that.

A. Yes, that was a check that I gave Dyer for their half of the second sale of twenty acres, which was in February of this year.

The document was marked Plaintiff's Exhibit 2.

Plaintiff's Exhibit No. 2.

Fort Worth, Tex., Feb. 3, 1920.

No. 4988.

THE FORT WORTH NATIONAL BANK 37-5

Pay to B. T. Dyer or order \$2600.00 Twenty-seven hundred dollars Dollars.

TOM B. OWENS & CO.

By Joe F. Bailey.

1/2 Int in Sale of 20 Acre Tillman Co. Okla

(On Margin: "Tom B. Owens & Co. Cotton."
Endorsed: "Pay to Doan Oil Co. B. T. Dyer."
"Pay to order of First National Bank, Shreveport, La. Doan Oil Co., Inc." "Pay to the order of any bank, trust or express company. 84-2. Feb. 11, 1920. 84-2. All previous Endorsements Guaranteed First National Bank, Shreveport, La." "19 Received payment through Clearing House. 19.

(Testimony of F. E. Couch.)

Feb. 13, 1920. National Bank of Commerce, Fort Worth, Texas.'')

The acreage was sold in three tracts; the first forty acres were sold for \$300 an acre, less 10%; the other two tracts were sold for the same amount, less 10%. Doan went down to Louisiana and he told me that at any time Dyer and I wanted to sell the tract of land it was perfectly all right with him. The whole acreage was thereafter sold. I had several conversations with Doan respecting Dyer in Louisiana at different times. I remember I talked with him in July and August; he had been down to [79] Louisiana on several trips; this was in 1919. Doan showed me the maps of Louisiana where he had made some purchases at different times; in fact, he tried to get me to go down there with him on several occasions. I remember that in one conversation he stated that he and Tom were going to make a lot of money down there in Louisiana.

Cross-examination.

Doan and I went up to Wichita Falls to look at a piece of property in the Burke-Burnett District. It was known as the Burke-Wagner property and did not relate to the five-acre piece that was subsequently purchased. After Dyer purchased it I accompanied Dyer to the Burke-Burnett District and went out on the well which was being drilled in the vicinity of this five-acre tract. I did not accompany Dyer prior to the time that the purchase was made, and at no time considered joining Doan in its purchase. I never had any inten-

(Testimony of F. E. Couch.)

tion of investing in this five-acre tract; I had not seen it before it was purchased and had only heard Dyer and Doan talking about it. I made the initial payment on the Tillman County purchase of \$1,000 with the consent of Doan. I told Dyer I had bought some acreage over there for \$125 an acre and if he and Doan wanted half of it they could have it. Dyer told Doan over the telephone that I told him they could have it and he said it was all right. He said that to Dyer over the telephone and I was in the room at the time. Doan finished the payment and when I came over to Wichita Falls I handed him the difference.

Mr. DURBROW.—Q. I show you a check, dated May 10th, 1919, made to the order of R. O. Roy, for \$8060 and ask you if that was the check that was issued by Mr. Doan in final payment of that Tillman County [80] property.

A. I was not present; that looks like the signature of Mr. Doan.

Q. Who is Mr. Roy?

A. Mr. Roy was the man who owned this lease, as I remember it.

The COURT.—There seems to be no dispute over the fact that Mr. Doan paid the balance.

Mr. DURBROW.—I wanted to know if this was the check signed by Mr. Doan individually.

A. (Continuing.) This is his signature; as I remember it, Roy was the name of the person from whom I purchased.

(Testimony of F. E. Couch.)

Redirect Examination.

With respect to other deals with Doan and Dyer respecting oil properties, I bought 100 acres from them out in Stevens County, in March, 1919. I don't remember if that was before or after I met Doan. I had my dealings with Dyer. The amount of the transaction was \$30,000 and the profit of Dyer and Doan was \$7,500. This was told me by the party who had some transactions with Mr. Dyer and he told me what it cost him and Mr. Dyer told me also. I did not discuss the matter with Doan.

Testimony of W. L. Leland, for Complainant.

W. L. LELAND, called as a witness for the complainant, testified as follows:

I reside in San Francisco and am in the mining, oil and farming business. I have known Dyer eighteen or nineteen years and have [81] been friendly with him. I have known Doan, I think, more than a dozen years, in Bakersfield, here and in Texas. I saw them in Texas many times, nearly always in the Fort Worth Club in their rooms at the fourth floor; I first met them in Fort Worth in March, 1919; I met Dyer there in February, 1919, and then came back here and returned there. I had conversations with Doan respecting Louisiana at Fort Worth; sometimes Dyer was present, other times not. I was in their rooms nearly every day, two or three times a day sometimes. More than half the time I saw them they would be together; they would be in their rooms there, and I would talk with them

(Testimony of W. L. Leland.)

an hour or more, sometimes. Shortly after Doan made his trip to Louisiana when he bought the forty acres from Greer and Clark, and then on subsequent trips he made down there, I had conversations from time to time with him referring to Louisiana properties. It was pretty early in April when he made the first purchase. He showed me maps when he came back. He suggested that I buy an adjoining piece and I went down and looked at the land. The Greer and Clark land is in the Bull Bayou District. The first conversation, I think, was in the morning that he returned from Louisiana back to Fort Worth. It was in his room in the Fort Worth Club, in showing me a map which he had, he told me the land which he had bought and marked it out in red and stated what some adjoining lands could be bought for and pointed out different wells that had been put down in that neighborhood and their history and gave his opinion that he had made a splendid bargain and that I should go down and get some land myself, and I went right down there for that purpose. Regarding Dyer, he said, "Tom and I are in a way to make a lot of money down there." Subsequently, I had many conversations with Doan with respect to Dyer and the [82] Louisiana properties. Every day or two, after he made his first purchase down there, I was in the room at Fort Worth, and especially after he made his second trip he was very enthusiastic.

Mr. METSON.—Q. Was there anything said by Mr. Doan about eyes bulging out or your eyes bulg-

(Testimony of W. L. Leland.)

ing out or anything of that kind said at that time?

Mr. DURBROW.—I object to the question as leading.

The COURT.—He may answer.

A. He stated, "Tom's eyes would bulge if we would sell at the prices that had been offered, to see how much money we have made already, but I don't think we should sell," and he did not sell.

Cross-examination.

As nearly as I can recall it, the exact words made by Doan upon making that last statement were, "Tom's eyes would bulge out," or "Stick out"—Mr. Dyer was not there—"would stick out if he knew how much we could sell this for, and the profit we would make." This particular piece of land he had in mind was the first forty acres that was bought. I think that statement was made after Doan made his second trip to Shreveport; I don't know when, but it was two or three weeks later than his first trip. I have known Dyer eighteen years, and since August, 1918, I have had one small deal with him; I closed the deal. I purchased for \$35,000 a ten-acre piece northwest of Eastland; I was shy of money to pay the full \$35,000; I have other associates; I asked Dyer to come in; he said, "I just can't see my way to do it." I asked him many times; finally he helped me out and gave [83] me \$2,000, but I understand he sold out to other people at the same price he gave me.

Deposition of Albert S. Leach, for Complainant.

ALBERT S. LEACH, called as a witness for the complainant, testified as follows:

I reside in Fort Worth; have lived there for forty-one years. I am in the oil business. I know the parties to this suit; I met them some time in the spring of 1919; my recollection is that I met Dyer first, possibly a little while before I met Doan. I met him in my office at Wichita Falls; I met Doan there also. Doan either came to my office with Dyer, or with Couch. I know a piece of land at Wichita Falls—a five-acre tract, popularly known as the Lamb Tract. I know that Dyer and Doan bought it about the time that I met them. Doan talked to me in a general way about the land, before the final payment was made. As to what Doan said, as I remember it, I showed him the map of the tract as it lay between the Humble Well in Block 58 and the Golden Cycle Well and the Bert Wagner Well over there Northwest—it was on a direct line between the two. He said, "I don't see how there could help but be oil in there." The Golden Cycle was a producing well. My impression was that it came in possibly 2500 or 3000, or may be larger, but I don't think so. That is considered a good well. I don't know what the size of the production of the Humble well was. The Bert Wagner well was one of the big wells in the Northwest field; in fact, the discovery well. It was estimated from 3 to 5,000 in its first production. Doan showed me on the map that the

(Deposition of Albert S. Leach.)

Lamb land lay in a direct line between the two wells. I am sure that we had a conversation about that because I know they told me that they were going to [84] make this other \$30,000 payment, or make the last payment on it. Doan did not talk to me much about that tract; it was mostly in a general way. I was in the brokerage business at that time and he was interested in getting something good. I can't say he asked for any specific information, but only talked over that section in a general way. With reference to any deal in that land, afterwards I made a deal on it, or they made a deal on it through me. The deal was never consummated; it did not go through, but they made a contract and the purchasers fell down on the money. As I remember it, the price was \$80,000 that it was sold for, and it was about \$40,000 or \$50,000 cash, and I think there was to be some stock. That deal must have been along in the fall—a few months after they purchased it; the deal that fell through was, I would judge, a couple of months after they bought it. It must have been about September of 1919. As to other business, I handled 80 acres of land across the River in Tillman County that they were interested in; that was 80 acres, or a little short; that was in April, 1919. I made the deal with Couch; Couch agreed to take it and then told me that Doan and Dyer were coming in with him on the purchase. It was purchased, I think, at \$115 or \$125 an acre. I talked to Doan about that; I dealt mostly with Couch and Dyer;

(Deposition of Albert S. Leach.)

Doan was not staying at Wichita Falls. Dyer had a room out at the house where I was living and I saw him very frequently when he was there. When he first came up there and took a room out where I was he was putting in the North Texas Supply Company. He and Mr. McLean got a room out there together. With regard to the sale of the tract of land in Oklahoma, I sold it all. There were three different sales made at \$300 an acre. I took up the sales of that property principally with Dyer and Couch. [85]

Cross-examination.

Dyer moved out to the same house where I roomed; I think he got a room at this house when he opened up the Supply Company. My impression is that was early in the fall. I dropped down at the office of the Supply Company once in a while. Dyer was not always there when I dropped in. I never sold for Dyer any other property than the tracts known as the Lamb tract and the Tillman County property. I never had any other dealings with him as a broker. The Lamb tract was not over half a mile from the Golden Cycle well, possibly three-quarters of a mile. The Burke-Wagoner was on a little further northwest. The Humble well was a little southeast of it; I suppose half or three-quarters of a mile. The next well was being drilled at that time. It was an offset to the north. My impression is that it was in the five-acre tract adjoining it on the north. It eventually came in as a salt water well. There

(Deposition of Albert S. Leach.)

were other wells closer to the Lamb tract than the three wells I have named. I attempted to sell the Lamb tract as agent for Doan and Dyer. There was a contract made for the sale of it. The payment was to be made within ten days, but it was never made. Before Dyer put in the Supply Company he made his headquarters in Wichita Falls at my office. I finally sold the Tillman County property at \$300 an acre. The first two checks were paid over to Couch. The other check we gave to Dyer. He happened to be in the office when the deal was closed. [86]

Redirect Examination.

At the time the Lamb tract deal was closed there were several wells drilling; they were not finished wells; to the southeast was the Humble well and that was a producer.

Deposition of Mestre Olcott, for Complainant.

MESTRE OLCOTT, called as a witness for the complainant, testified as follows:

I reside in Tulsa, Oklahoma. I have been in the oil business for seven years. I lived at Fort Worth for eight months and have lived in and about Shreveport, Louisiana. I have known Doan and Dyer both about a year and seven months. I remember a business transaction with them; Dyer and Doan bought a lease from me in Eastland County, Texas, north of Cisco, 240 acres; a broker named Whitney introduced that transaction; the day they came to my room I agreed that I would

(Deposition of Mestre Olcott.)

sell them this lease provided they would enter into a preliminary contract to show their good faith—I believe the next morning the agreement was drawn up and also a check of \$500 given to me by Dyer, and this was for the examination of the title—a period of ten days—and the title was approved and the lease paid for that day at the First National Bank; \$15,000 was involved. The assignment of the land was made to Dyer. Afterwards, I resold all of it, except twenty acres. I kept in touch with Dyer and deposited the money in the bank, I think to Doan's credit. I sold a lease for Doan in Louisiana and I offered Dyer two leases in Texas, one in the Burke-Burnett field and the other near the Hill well. Dyer signified that he was not interested in them. The 220 acres were sold for \$100 an acre; that is what they got net. I saw Doan in Shreveport quite often. After my arrival in Shreveport on Oct. [87] 1, 1919, I had a conversation with Doan and asked him if Dyer was not coming down to Shreveport with him, and he said that he was going to take care of the Texas end of their business and he was going to take care of the Louisiana end of it. I don't think anyone else was present at that conversation, and it was pretty soon after my arrival. Doan and Dyer had what seemed to be a combination of room and office on the 4th floor of the Ft. Worth Club. The 240 acres was assigned to Dyer. The first payment was made by Dyer and the balance by Doan.

Deposition of Edward J. Buckingham, for Complainant.

EDWARD J. BUCKINGHAM, called as a witness for the complainant, testified as follows:

I have resided in San Antonio for about fifteen years, and for the last two years have been in and about Fort Worth at times. I am engaged in the oil business at present and have been exclusively for two years. I know Dyer and have known Doan about two years. I have talked with Doan about Louisiana properties. About a year ago I had a conversation with Doan at which Dyer and some other man, whose name I don't remember, were present. It was in the dining-room of the Fort Worth Club. Dyer had spoken to us with reference to some land which he said he and Doan had in Louisiana, and he said that they had a 320-acre tract that was about three or four miles from a tract of land which they had secured and a well had just come on, and he thought that would be a very good buy; he priced the property to me at \$50 an acre, but said that he wasn't familiar with it and he wanted me to come down and meet Mr. Doan in the evening—our President was here then from Chicago, and we talked it over and went down in the evening to talk it over with Doan. He was in the dining-room at the Club and he described the property to me in a little different manner from that which Dyer had spoken of, and after consideration with our president we decided that it was a little too [88] high, and too far from production to be what we thought

(Deposition of Edward J. Buckingham.)

we could handle at that time. I had a conversation later with Doan at the elevator in the Westbrook Hotel in February of this year. Nobody but Doan and myself were present. We were waiting for the elevator. I asked if Dyer and himself were still partners. I saw that Dyer had gone into the American Oil Engineering Company—and he says, “Yes, we are still associated together; he is taking care of the Texas end and I am taking care of the Louisiana end.” I did not buy the 320 acres at all.

Deposition of L. E. H. De Sallier, for Complainant.

L. E. H. DE SALLIER, called as a witness for the complainant, testified as follows:

My home is in Venice, California. I have been in Fort Worth from time to time since last January. I am now residing in Texas, first one place and then another through the oil fields. I have known Dyer and Doan possibly about ten years. I have known Doan in Texas. I first saw him there in March or April, 1919. At that time I had many conversations with him. I remember a conversation respecting oil lands in and about Wichita Falls. I had a conversation at Fort Worth with Doan which was general and *would up* finally by my trying to interest them in oil lands. I believe Doan stated—in regards to the lands in Tillman County, that he could not reach any decision and for me to see Dyer, his partner, in Wichita Falls, and he asked me if I knew him, and I said, “Yes, I have known him for years.” I had a conversation

(Deposition of L. E. H. De Sallier.)

with him later at Wichita Falls in regards to some Tillman County lands that he and Dyer were interested in. Doan stated that in regards to that land he did not wish to make any price—set any price for sale until he had consulted Dyer. [89]

Deposition of A. T. Jergins, for Complainant.

A. T. JERGINs, called as a witness for the complainant, testified as follows:

I reside in Fort Worth, Texas. I have resided there for two and a half years. My occupation is oil, oil-producing, drilling oil wells and operating, and have been so occupied since 1908. I have been around Fort Worth for two and a half years continuously. I have known Doan about ten years. I became acquainted with him first in California. I have had conversations with him in Fort Worth, Texas, respecting oil lands. I have had oil leases or options in the Desdemona District. At the Westbrook Hotel in Fort Worth I had a conversation with Doan at which Dyer was present, and I put a proposition up to them, and they said it looked pretty good; if I remember correctly the reason they did not want to go into it then was the fact that Doan said he had just gotten here and he wanted to look the field over and get acquainted with the values, and that he would see me in a day or two—something like that, and then we went into an office there, I think Mr. Pyron's office, and then I left them to see them a day or two afterwards, and the final decision, as I remember, was

(Deposition of A. T. Jergins.)

the fact that Mr. Doan told me that he had just gotten here and that he had not familiarized himself with the values or conditions, and that the matter required such haste, we would have to count them out. I had a conversation later regarding a tract of land in Comanche County. I took this matter up first with Dyer. He said to see Doan about it. Then I took the matter up with Doan and we talked it over and he said that the proposition looked pretty good, but that Tom (Dyer) was in the field and that he had not talked the matter over with him and that he left those [90] matters of buying property more or less to his judgment; that Tom looked after that end of it, and that he looked after the inside, and that as soon as he came back here, he would talk it over with him and see what we could do on that. I did not take the matter up with them again. I had other dealings with Doan and Dyer; I presented a forty-acre tract in the same district; I took that up with Doan and his remarks were, that this looked all right, but we are—we have got several properties on and I wouldn't want to make a deal without taking the matter up with Tom, you see; as I told you before, these propositions—I pass these propositions up to him; we are partners in our dealings here, and that he looks after—it is up to him to pass on the outside, on the purchase of the property.

I had a block of 6500 acres in the south part of Comanche County, in which I had made a deal with the Lone Star Gas Company to drill a well on it—

(Deposition of A. T. Jergins.)

a test well, and they left me a certain acreage, and I met Dyer one day and told him I had a lease in this district; that the Gas Company was going to drill a well there, and if he could sell any of that for me—he asked me the price and where it was located, and I told him; he came back shortly afterwards and told me he had sold two 160 acre tracts, and if I remember correctly the amount paid to Dyer as a commission on the sale of the two tracts was \$1600. I paid that by check to Dyer. The check was in his name. I had a conversation with Doan regarding Louisiana. It was about the same time that Dyer was organizing a supply company at Wichita Falls during the year 1919. The conversation took place in the room of Doan and Dyer. Doan, Dyer and myself were the only persons in the room. Doan had returned from Louisiana. He had a map of the oil fields and we were talking about conditions there, *and* [91] and I put the proposition up to him whether or not he wanted me to come in on it and he said, “Well, I think I have got it all financed.” He said, “We have taken the matter up with different people in San Francisco,” and I asked him if Clarence Berry was one of names in with him on it, and he said no, he wasn’t, and he made the remark that “Here is where we are going to make a cleanup,” and that they had been offered a profit on one of the tracts that he had acquired. As to the names he said that were financing it—to the best of my recollection, he mentioned the name of

(Deposition of A. T. Jergins.)

—mentioned the fact that Mr. Lucey and someone else was with him in the deal.

Q. Do you recall the name of Titus?

A. Well, yes, I think that is the name.

Q. Did he state whom he referred to by the word "we"? A. No, sir.

The Comanche transactions were during the months of April, May, June and July, 1919.

In the conversation with reference to Louisiana I asked Doan if I could get in on it and he said, "I think we will get the matter all financed." He said, "Lucey and Titus are coming in with us, and I think we won't need any more money.

Testimony of B. T. Dyer, for Plaintiff.

B. T. DYER, called as a witness for the complainant, testified as follows:

I reside in San Francisco and am in the oil business, and have been so engaged about ten years all over the country, California, Texas, Oklahoma and Louisiana. I have been connected with the General Petroleum Company of California and have operated for myself and others. I know the defendant, Doan. I had many conversations with him in 1918. I received a telegram from J. F. Lucey, which I showed to Doan in our office in the Balboa Building the time it bears date.

Mr. METSON.—[92] We offer the telegram in evidence.

Mr. DURBROW.—I object to the introduction of the telegram, as irrelevant.

The COURT.—It is only preliminary, anyhow.

Mr. DURBROW.—Exception.

(Telegram was here marked Plaintiff's Exhibit 3.)

Plaintiff's Exhibit No. 3.

(WESTERN UNION TELEGRAM.)

“Received at SE Corner Pine and Montgomery
Sts., San Francisco

P Houston Tex 1235 P Mar 29 1918

B. T. Dyer

Balboa Bldg

San Francisco Calif

It is consenses of opinion that Ranger fields lying between Ft Worth Brownwood Coleman offer possibilities as great as Oklahoma Have just driven through field and this is my own conclusion Am so impressed that have authorized installation two stores at Ft Worth and Ranger Believe you and Doane could make great success but question the advisability of you coming aline It requires two You and Doane have the necessary combination of ideas and energy to make good In my opinion there would be no question about you doing so although all large eastern companies as well as mid continent and Texas are represented We will perhaps see the greatest drilling campaign in the vicinity of the prospective fields in the history of the country I saw one very excellent well producing fifteen hundred barrels of thirty-six gravity oil and possibilities are very big and the extent of the

(Testimony of B. T. Dyer.)

field so great that it is difficult to describe them to you in this wire

J. F. LUCEY.

130PM." [93]

Some time after the receipt of that telegram I went back east for a trip, was in New York, and then came back here, and then I went away. I sent a telegram to Doan, of which the document shown me is a copy and dated May 9, 1918.

Mr. METSON.—We offer this telegram.

Mr. DURBROW.—I object to the introduction of that telegram as being irrelevant and self-serving declaration.

The COURT.—It is only preliminary; it does not tend to show a partnership, perhaps, but it shows the relations of the parties; I admit it for that purpose.

(The document was marked Plaintiff's Exhibit 4.)

Plaintiff's Exhibit No. 4.

(WESTERN UNION TELEGRAM.)

"New York May 9 1918

L. E. Doan

Balboa Building

San Francisco California

Carr and Lucey here Carr just from Texas They report Texas wonderful Lucey says had we come when they wired we would have made more than we would have made in California They report while many lessors are active there is still

(Testimony of B. T. Dyer.)

splendid opportunity on account of area of field proving daily Talk this over with Fleishakker if you think best See if he is interested go in game with us otherwise believe Toronty crowd will back me Advise him Wyoming deal made Will likely be home last of week

B. T. DYER."

I was in Texas five or six weeks on a preliminary trip, going back in the latter part of August, 1918. In the latter part of August, 1918, I saw Doan many times in San Francisco at our offices in the Balboa Building. I had many conversations with him [94] with respect to business relations between us. After I returned from Texas, what was said between us respecting the oil business was in substance as follows:

I said, "Larry, there is a wonderful field over there; I made this preliminary trip, and Lucey's telegram did not exaggerate at all; I started in at Houston, covered some of the Coastal Field, and the Goose Creek Field, saw how they were drilling there with rotary down 2800 or 3000 feet, and of the wonderful, big wells they were producing there that we didn't know of in California and didn't hear of; that I went from there on up through Eastland County to Ranger, Stevens County, into Fort Worth; I saw them drilling at Eastland, which was all standard tools, that they are drilling there remarkably quick compared with our California drilling at the same depth, and getting some wonderfully big wells; and at Fort Worth, which is

(Testimony of B. T. Dyer.)

the headquarters of the present activity, the brokers and the land dealers and the lessors are making a world of money, that they are taking options on leases and reselling them for a profit, a big profit, sometimes holding out portions of the leases, and everybody seems to be making money, it is a wonderful spot; and that I went on to Wichita Falls, which is a different character of country from Eastland, and I saw them drilling there, using rotaries, that that country is a sand country, that they are getting good wells there, and the excitement is started there, they are doing big trading there; and on through Oklahoma, up as far as Tulsa, where they were getting wonderful wells there; the opportunities are so big that I am going back, and we ought to go back and get in the game, I am going back anyway."

Doan, after considering this, told me that he had a lawsuit on here, I think regarding some family affair, and he was doing [95] something about his taxes, and he said, "I will come back with you as soon as these are cleared up, you go on back and if these people here, who are very enthusiastic, won't come in and help us finance, we will work this out carefully and be very careful what we do, and I am sure we can make money; I will follow you up as soon as I can get these matters cleared up, we will go back there and hit the ball, and I will come back in two or three weeks and help, and we will divide our profits; if these people out here are not enthusiastic, I will get Mr. Titus, who will prob-

(Testimony of B. T. Dyer.)

ably join us, I can always bank on him, possibly you can get Lucey; I don't want to jeopardize my whole fortune, but we will work this out very carefully and conservatively, and when we get something we can absolutely bank on I am sure we can get the financial help of Titus and Lucey, and some of these people here; you go ahead."

I did so. In two or three weeks he followed up. He told me to get matters in shape and see what I could learn about the fields.

The above was many conversations. After that period of time I went back to Fort Worth. I think it was in October, or maybe September, I immediately started in to look over the country and chase down whatever leases we had been offered. There were many of them offered. I learned the way they handled the business and got acquainted with people and companies. It was considerably different from the way we operated down here, and you had to be careful the way you jumped in. Doan stayed in California some weeks after that; I think it was possibly in November when he came over there. He came to Texas after I did; I should say three or four weeks after. We had a room together at the Westbrook Hotel to start with, and later [96] we joined the Fort Worth Club and took a room there. I am not positive when we went to the Fort Worth Club, but it must have been in March, 1919. Doan and I were interested in business transactions in Texas together. The first transaction was the purchase

(Testimony of B. T. Dyer.)

of considerable acreage in Bosque County, what we call "wildcat leases," which lay on the head of a production; it looked like a production was coming to it. That was taken in November, 1918, by Doan and myself, in Doan's name. In March, 1919, we sold the most of them to the Gulf Production Company, of whom Walter Pyron was manager and with whom Leslie Spoons was connected. These leases we disposed of at a profit. There was also a deal in Eastland County. Doan wrote me the following letter:

Plaintiff's Exhibit No. 5.

(Letterhead of L. E. DOAN.)

San Francisco, Cal., Aug. 9th, 1918.

"My dear Tom:

Recd. your letters of the 4th this morning—with clipping enclosed—I am thoroughly satisfied that there are many opportunities in that Country and you are on the right line—It takes big money however to do business and without it all you could expect to do would be to turn something on a commission basis—And as you know from past experience it is hard to land a commission deal—I have been thinking hard about the whole thing—and have tried to make up my mind what is the best way to handle the situation and I have about come to the conclusion that our first hunch was the best—Things move so fast in the oil country, that, without money to plank down on options it is almost impossible to do anything. One cannot go out on the street and get people to put up

(Testimony of B. T. Dyer.)

money on [97] short notice to buy options so far away no matter how desirable they may be and if you do succeed they want all the profit. Personally I cannot afford to take a chance—between income Taxes and other losses & expenses this past year I will have to conserve what I have left—At my age I cannot afford to go broke and be looked upon as a has been—I think I am going to get by on income tax for about \$17000.00 and may be less. Titus was here and we made a showing which they can't get by—I am to have a further hearing on the 15th and the agent here intimated that he would cut out excess profits tax and put me on the same basis as the rest of the syndicate—The rest of it will have to be decided in Washington. Titus left for Washington yesterday—He certainly knows how to handle himself—I spoke to him about oil—He says he is in so many things that he does not care to take up anything new—but would always take a shot for a small amount—He has a big 100,000 acre real on in Missouri and Kansas which some parties have put up to him. He wants me to handle it if he goes into it any further—He will get more dope when he gets to Washington and let me know about it.

I am satisfied Tom that we must first raise at least \$100,000.00 before we can expect to do any business—We must have the money first. It is alright to look the field over and get a line on propositions—but we must have the money—It cannot be raised as I said before on short notice—

(Testimony of B. T. Dyer.)

If they carry us for 25% and expenses—That is as much as we can expect—As soon as you have some good things lined up so we have something to talk about, we should then get busy and raise money—I hate the idea of going to Fleishacker & Coneston and yet we may have to do it. I think Clarence will go in soon as he returns [98] from Alaska—about the 15th inst—Lucey and Titus will go and we can get others—We must have a finished deal so we can act without hindrance or delay.

The Associated have not yet decided on Santa Maria—I have made up my mind to wait until Monday and then if they are not ready to pull the pipe and sell out—

I fully appreciate all you are doing. The information you are getting will be valuable—but we must get together and get the money.

Emery will graduate on the 17th. He will probably have a two weeks furlough and come home—Had a letter this morning—Says everything is O. K. with him.

Kindest regards,
DOAN."

With regard to a transaction between Doan and myself in which Paul Shoup was brought in, I had tied up about 45,000 acres of leases in West Texas in Garza County, and they looked favorable and I offered them to Fred Ripley and Max Whittier, who took it up with the Associated Oil Company, and, in turn, it went to Shoup, who was an officer of the Associated, and he had a geologist

(Testimony of B. T. Dyer.)

make a report. I kept after them and got Doan to try and hurry them along. The deal was not completed because a favorable report was not made. My recollection is, Doan wrote me a letter that he had seen or would see them.

There was a business transaction between us in Eastland County, Texas, of 240 acres. The deal was made through Olcott. A written contract was entered into, dated March 14, 1919, between myself and Olcott, with reference to those 240 acres.

The contract was introduced in evidence as Plaintiff's Exhibit 6. [99]

The contract provides in substance for the sale from Olcott to Dyer of an oil and gas mining lease covering 240 acres in Eastland County, Texas, for a total purchase price of \$15,600, or \$65 per acre. It provided that \$500 be deposited with the Bank together with the assignment of the lease as earnest money, and purchaser to have ten days to examine title; if title acceptable the balance of purchase price to be then payable.

There was a profit of about \$6400 on that deal. We paid a commission by giving twenty acres to the man that brought it to us. There was a deal in Oklahoma later. We went in with Couch and took a lease in Tillman County, Oklahoma. There were supposed to be eighty acres, but it measured up short. I think 75½ acres; the total payment was \$9060. They were afterwards sold. The purchase was about the 7th of May. I was at Wichita Falls. Mr. Couch was there. Mr. Doan

(Testimony of B. T. Dyer.)

was at Fort Worth. About the same day we had just taken five acres of what we called the Lamb tract in the Burke-Burnett extension. Doan wanted me to look at that piece while I was up there and he wired me not to lose it unless I saw something better. I went out to look it over and I could not see why it would not be a good lease. It lay right in between a development in the town and what they call the Northwest Extension, and it was in the same section with a well that was supposed to make 2500 to 3000 barrels, and it looked awfully good, and I bought it and made a \$10,000 payment to hold it. The purchase price was \$40,000. That payment was made in Wichita Falls. Mr. Doan was in Fort Worth at that time. Couch was in Wichita Falls at that time, but was not with me when I bought it. Two or three days later Doan came up to Wichita Falls and went out over it with me. After the purchase I went back to Fort Worth. Mr. Doan went with me. After that [100] Doan made a trip to Louisiana. I think it was fifteen days after the first \$10,000 were paid, we had to pay the \$30,000. Doan came up and arrived in Wichita Falls, I think, on the day that it was due. I don't remember whether we went out to the Lamb tract on the day it was due or not; I think we did; I think we drove out in the morning and came back about noon. The off-set well was being drilled and there was some question whether it was a good well or a dry well. In the two weeks that we had it we inquired a

(Testimony of B. T. Dyer.)

good deal and tried to learn the facts about it. I was a little nervous about it. Doan and I conversed with respect to the payment. I said, "Larry, I don't think we had better make this \$30,000 payment, we had better take a loss, let it go by default, because I can stand my share of the loss of the \$10,000 better than I can of the \$40,000." He said, "What? You have not lost faith in that, have you?" I said, "Well, I don't know what you call it, but we have had two weeks at it, and it would look as if there was a little cloud on it, and these fellows next to us seem to be juggling." He said, "Well, some friend of mine tells me that he thinks he can sell that"—I think it was for \$75,000—"and I am going to go ahead and make the payment." Mr. Doan and his son and I were all together. We walked down the street talking about it, and I said, "Well, if you want to go ahead and make it, we will sink or swim together, and if we lose out we will have to work all the harder, let her go." We stood in front of the bank a few minutes and talked it over, and finally he went in and made the \$30,000 payment.

I think Doan first went to Louisiana the latter part of April, 1919; he came back and reported making a deal on a well that we called the Giffen well; also, of a 40-acre tract that he had bought in Bull Bayou; that was a dandy. Mr. Giffen was in [101] trouble; he was representing some man from Los Angeles by the name of Graham, who had

(Testimony of B. T. Dyer.)

not sent the money to take care of the bills, and Giffen and Doan were old acquaintances, and Giffen put it up to Doan to take the transaction over and to pay the actual expenses and finish the well up. Doan told me about it. Then he bought the 40 acres, he told me, in Bull Bayou, and just a day or two after he had it he had been offered a nice profit. He said, we would sure make some money out of that. We discussed about selling it. I was generally pretty strong for selling. We talked about it, and he said: "No, Louis Titus is coming out shortly, and we had better wait until he gets there and see what he thinks about it." I said, "All right." It was not sold, he kept it.

Doan told me about when the Doan Oil Company was organized. After Titus had been there in company with Doan and Lucey, he came back to the Fort Worth Club, which was our headquarters and meeting place, and said, "We have arranged to make a \$300,000 pool, Mr. Titus has agreed to take half of it, Captain Lucey a sixth of it, and you and I a sixth apiece." The corporation was not organized until a little later than that. It was organized in June, 1919. I know considerable about the Martin Considine Syndicate. That deal was on in May or June, 1919. I had been out in the country and when I returned Doan told me he had gone in with Joe Terry and had put in a \$10,000 pool to pay for the option, \$2667, and for me to charge up our account with that amount on this option, that this bunch of fellows back of

(Testimony of B. T. Dyer.)

it were going to refinance it and put it into a syndicate where we would get this money back and would get as a bonus for putting up the \$2667, a stock bonus, which would not cost us anything. He told me to put that in my memorandum book, which I did. About three or four weeks later he told me that they had paid him back out [102] of their sales this money and to credit that up, which I did. That was one of Doan's deals, and I was not very active in it. The bonus stock was agreed to be pooled, as I remember it, up until this summer, I believe it was June, and Doan put that in his name, which was all right. Doan told me that when the deal was finally made that we were to get 20,000 shares of stock that was our personal property 50-50. As to the Oklahoma lease, after we had that a while, I think it was after the first place was sold off, Doan told me he thought it would be best to put that in with the Doan Oil Company, that he had talked with Titus about it, and I said, "All right, all in the same pocket, it is all right with me." He afterwards told me that he was going to put the Lamb five-acre tract in the Doan Oil Company too. That dropped in value shortly afterwards, and it didn't look very good. He said that Titus said that that and all these pieces should be put into the Doan Oil Company, even though that was a loss, to which I was perfectly agreeable.

I sold some leases for Jergins and got a commission in March, 1919. I sold some leases in

(Testimony of B. T. Dyer.)

Archer County, Texas, for the people in the Bank there and got a commission on that. I have never received the one-sixth interest in the Doan Oil Company. I demanded it many times; the final demand was in March, 1920, when I went to Shreveport. I went to Shreveport, as Larry had promised to fix this up many times before and had not done it; I went down and told him that I thought we had better fix it up. He just reared up and told me that he decided I had no interest with him. I was very much amazed, I could not believe it. I asked him what was the matter with him? He said I had not kept my contract with him and had not made a success of the North Texas Supply Company. I said: "Why, Larry, look at your statements, you know I have made a success of the North Texas Supply Company;" and he called me a damned liar, and I grabbed a water bottle and was going to crack him on the head and— [103]

Q. Well, never mind that. Has there been any settlement between Mr. Doan and yourself?

A. No, sir.

Cross-examination.

As to exactly what conversation took place between Doan and myself with reference to any partnership, there were a great many conversations. I cannot remember back two years and give you word for word all the conversations. It was one continuous conversation. That was our chief topic in the morning in the office; then we would go to lunch together and frame and talk and everything

(Testimony of B. T. Dyer.)

else. It is pretty hard to recall it word for word. On my direct examination I gave the sum and substance of all conversations relating to a partnership arrangement and I don't recall any other conversations or any other arrangements I have ever had with Doan with reference to any partnership. What I said upon direct examination is all the arrangements that I ever had or ever made with Doan at any time with reference to a partnership between us. I did not have any other arrangement or understanding with Doan except as I have testified. When I made my first trip to Texas in July, 1918, I went on my own account and at my own expense. I never asked Doan to refund any portion of the expenses I incurred on that trip. The conversations between Doan and myself in August upon my return were in our private offices in the Balboa Building. The sum of all that was said by Doan at that time in response to my suggestion that we go to Texas was that I stated to Doan after I advised him what investigations I had made, "I am going back anyway, Larry, and I want you to come back with me," and Doan's reply was, "I will come back with you and follow you up and hit the ball and back you up, and we will divide the profits." That was the sum of our many [104] conversations. I was a few weeks in Texas before Doan went down there. I had a deal in Bosque County, in Stevens County, in Eastland County, and in the Burke-Burnett County, also in Tillman County. As to the Bosque

(Testimony of B. T. Dyer.)

County deal, that was sold. I told Doan I thought we would not lose any money on it. Doan paid the money and the land was taken in Doan's name at my suggestion. My name did not appear in that transaction at all. We did not carry that land in the name of Doan and Dyer, or Dyer and Doan, and we never had any acccount in the name of Doan and Dyer, or Dyer and Doan. Only some of the bills around town, the garage bills, were called Dyer and Doan or Doan and Dyer. We never had any bank account nor common funds. We never had any common books of account. I kept a little memorandum and we used to sit down once in a while and balance up what we had done. I have not got that memorandum book here. We never used any stationery upon which both the names of Doan and Dyer appeared. I had a power of attorney from Doan which was given to me shortly after the Bosque leases were issued. Those leases were sold in the name of Doan by virtue of that power of attorney. I was acting as his attorney-in-fact. As to the Eastland leases, we had no joint account with reference to that transaction. They were taken in my name and I made the first payment on them. I put up \$500 good faith money. That was my money. Doan advanced, I think, about \$15,100. My \$500 was returned to me; after they were sold and cleared up that was deducted. The Tillman County purchase was taken in the name of Tom Owens. All I advanced was some lawyers' fees. I have not recovered them. The

(Testimony of B. T. Dyer.)

\$10,000 payment on the Burke-Burnett five-acre tract was Doan's money. I gave my check for it. I did not have \$10,000 in the bank at that time and Doan told me to draw the check and he would go in and deposit a check to my account to cover it. It was Doan's money and virtually Doan's [105] check, and Doan paid the balance of that \$40,000. Doan's son was present when I advised Doan not to make a second payment on that property. That was made two weeks later. In my judgment there was a question, there was a cloud as to the value of that property; we could not just learn what that adjoining well was; whether they were trying to cover something up or whether they had water. At the time the \$30,000 became due on that five-acre piece I advised Doan not to make the payment, and in the presence of his son and himself, I said: "All right, we will sink or swim together," and also, I would bear half the loss. I considered I had a half interest in that \$40,000 with Doan. I do not recall that Doan ever told me that I had a half interest in it.

Doan went to Louisiana and purchased forty acres in the Bull Bayou District and subsequently told me he had made that purchase. I had nothing to do with that transaction. I knew nothing of it except what Doan told me at that time. Upon his return from Louisiana he advised me that he had made that purchase and we discussed selling it. I don't think anybody else was present. That was shortly after he bought it, I think about the first

(Testimony of B. T. Dyer.)

part of May. I am positive that within two or say five days after Doan made the purchase of the 40-acre Bull Bayou piece, we discussed in the Fort Worth Club the question of selling that property, and I think it was early in May. I know Doan purchased another 80 acres northeast of the 40 and about 2500 acres of "wildcat" about three miles northeast of the 80. Doan told me of those purchases. What Doan told me about the Louisiana property is practically all I know. I was there a couple of days and went out to the 40 and the 80-acre leases with him and went over it. As to anything I did with the purchase or acquirement of any property, leases, or land in Louisiana, I made one sale of a piece [106] down there near Bull Bayou in November, 1919. I made it for Doan and myself. Some man had a lease and I was instrumental in selling it and Doan's geologist sent me \$530 and when I came out to San Francisco I gave Doan half in cash at the Palace Hotel. That was in November last year. As to what I did with reference to the Considine Martin Oil Company, I did not have a great deal to do, except Doan wrote me to give all the help I could, so when I came to San Francisco a good many spoke to me about it and I talked with a good many about it and did give him a little help, but I was not very instrumental in that deal. That was one he was looking after. I did not personally put any money into that deal, any out of my own account. Doan told me he put money in that deal;

(Testimony of B. T. Dyer.)

we never had a joint account, only an operating account. By operating account, I mean that we would make a deal like that; he would tell me what he had done in this case; he told me he had given Carey \$2760 and to make a note in my memorandum; that we would get it back shortly. No profits which we made in any joint venture were put into any joint account. As to the deal I had that Leland testified I had with him, his testimony was correct with reference to that. I talked to Doan about that deal and he said he did not want to go into anything that Leland was in, and Leland was just temporarily a little short and wanted me to loan him a couple of thousand dollars, which I did. I told Doan all about it at that time. I did not have any deal with Leland, I just loaned him the money. I did not make a profit in that venture. I did not get my money back. Later on, he told me he would like to have me keep that as it might turn out good. I told him I would keep it, it did not make any difference to me, it was a fair chance, and I turned around and sold half of it to a friend of mine for just what it [107] cost me.

Q. Then you did make that deal with Leland such as you have outlined?

A. That came up later, many months afterwards. Leland very often would speak to me about going in on something and I would speak to Doan about it, and Doan did not want to so I told Leland I could not go in, I was in with Doan, and when this par-

(Testimony of B. T. Dyer.)

ticular deal came up, he needed a little money and borrowed \$2,000 from me. I advised Doan at the time and talked with him about it; I never kept a thing from him, had nothing but what was in common, and I loaned Leland this money, and later on he was going to let a contract, I believe, and said if it was agreeable I might keep that interest, or he would pay it back, either one; I did not want to keep it, and I told Doan about it, that I was going to keep \$1000 in it, and I let in a man named Delaney for \$1000, and I just let it go that way. I really did not want the interest. I kept the interest as my own. I never had an independent venture in any way except with Doan. I accepted employment from the American Oil Engineering Company. I did not accept anything from them until I discussed the matter with Doan. My employment started with them some time this year, along about February or March of this year, regular employment. They gave me a retainer fee starting last fall, I think in November or December; that was simply to hold me and give them what little help I could give them. As to any arrangements in September, 1919, I think they called me back there, I don't remember the month, and I would not make any arrangements with them until I talked the matter over with Doan. I positively did not make an arrangement with them in September to enter their employ. I do not think I made any arrangement with them at all that early. My [108] regular arrangements were made this year. As to

(Testimony of B. T. Dyer.)

when I made any definite arrangements with the American Oil Engineering Company to perform any work or discharge any services for them, it might have been the last part of September or October that I talked with them. I decided to make arrangements with them along after the first of the year, but they sent me a monthly retainer check; I believe it was last November I first got my monthly retainer check; it might have been in October, but I think it was in November. That first retainer check was \$1000 a month. For that \$1000 a month I was to give them such time as I could without interfering with anything else. If they had any lead or contemplated getting a lease, or something, they would send word to me and I would make a report for them. I did not do very much for them until this year. The first agreement I ever made with them, I told them that I could not make any agreement. The first agreement I made with them which resulted in their paying me a thousand dollars would be after the first of this year, 1920. After October or November they paid me \$1000 each month and after the first of the year they started to pay me \$1250 a month. I have used the money in expenses and for my own purposes. I never invested any money in Louisiana in any property in which Doan was interested, except through Doan. I never invested one cent individually in any of these projects of Doan's. I don't know how much money Doan invested in Louisiana,

(Testimony of B. T. Dyer.)

except that he told me that he had put in \$100,000. I don't know how much he invested in Texas.

Redirect Examination.

I gave Doan my power of attorney. I had a conversation with Doan about reimbursing money he advanced for me in Louisiana. That was several conversations, most of them in the Fort Worth [109] Club in 1919 and 1920. I told Doan I wanted to know how far they were going to go on their idea, that I could get my \$50,000 for my interest, but I could not keep pace with Mr. Titus if he went too strong, and Mr. Doan told me that was all satisfactory, that the property was in good shape, and they were going to revamp or reorganize in a short time a new company, and the idea was really we would get all our money back with a little profit, and still retain a controlling interest in it, and he preferred not to have me get this money, in fact he was afraid I would have to put it up as collateral on the interest, and he did not want to let the voting power, half of it, get out of his hands, and he would carry it until we were dead safe. Doan asked me whether I could get the money. I told him of two places that I could get it. I told him Mr. Fleishhacker had agreed to let me have the money, and he told me that he preferred I would not get it from Mr. Fleishhacker, that he did not want him to share in the profit. I showed him a letter of the American Oil Engineering Company, and he told me when I needed this money to advise them and they would be able to get it for me.

(Testimony of B. T. Dyer.)

Q. Now, do you remember about what date that conversation was?

A. I started in from the first day that he told me that they had made this \$300,000 pool, and insisted many times that he had better let me put this in, and he always gave me that same answer. Just hold off, we were going to reorganize in a short time, and make a big company of this, and we will get this money back; I insisted many times that he let me put up my half, and was always met with the same answer.

I conversed with Doan with reference to the American Oil Engineering Company. My first talk with anybody in connection [110] with that company was a telegram from Mr. Wynn Meredith, whose office is in San Francisco with Sanderson & Porter. I got that telegram last fall. It went through Doan's hands. I was in either Pittsburgh or Chattanooga when I got that telegram repeated. Doan opened it and retelegraphed it to me. In pursuance to that telegram I saw Meredith in New York where I went from Pittsburgh, and I told Meredith that I was associated with Doan and looking after the North Texas Supply Company, and it would be impossible for me to make any arrangement with them; however, they were a fine crowd of men, and lots of money back of them, and while it was a pretty nice thing that we could be associated with moneyed men that way, I could see the virtue of it, I could not absolutely make any arrangements about it, I could receive nothing from

(Testimony of B. T. Dyer.)

them until I talked to Mr. Doan. I told them that I would be very glad to make any report or do anything that I could for them absolutely out of courtesy to Wynn Meredith with no pay. I talked to Doan about it afterwards and related that conversation. Doan said it might be a good channel into big money, and it would be a good thing to keep in with them that way, perfectly satisfactory. I said, "Is this all right, you are getting your salary from the Doan Oil Company, I will get this salary," and he said, "All right, go ahead, that is perfectly satisfactory to me, and it puts us in touch with money, with good, big money, the gateway into the money at New York. I told him at that time I talked with them about his property, that he told me of some offer for three quarters of a million dollars for a couple of pieces he had; they knew, in a way, about those leases, and I told them about the project; they told me that I could negotiate with him for the purchase of those at \$800,000, and I made him the offer and told him all about it, and he said, "No, it is worth a lot more than that." [111] He would not think of it. So I advised them I had done that.

As to any conversation with Doan about his carrying my interest in the Doan Oil Company for a percentage, I don't remember of holding such conversation with him on that particular point. I talked with him so many times about it, but I don't remember of a conversation on that point of whether he would carry me for any particular interest. I

(Testimony of B. T. Dyer.)

told him I would have to give Fleishhacker a quarter of it if I got the money from him. Doan said he did not want them to share one bit of it. Doan wrote me a letter dated October 12, in the year 1919, I think.

The letter introduced is Plaintiff's Exhibit No. 7.

Plaintiff's Exhibit No. 7.

(Letterhead of DOAN OIL COMPANY, INC.)

“Shreveport, La. Oct 12.

My dear Tom—

I will try and get up to Fort Worth sometime next week—So you had better write me fully what you have in mind and if there is anything I can do will take it up with you when I go to Fort Worth—I have a lot to do this week—We are working on a couple of blocks of acreage—which I will have to stay with or loose out—Don't know yet whether I will get them or not—There is absolutely nothing you could do over here—the roads are all closed on account of rain and no chance to get out—While there is a big boom on here I have not seen anything that I could recommend to your crowd—That we cannot handle ourselves—and as I said before I cannot afford to mix up with you on any outside deals in Louisiana—I don't want to be criticized by Titus and Cap Lucey—So I think it the better policy for you to confine your operations to Texas & Oklahoma for the present—If I should start something else here—it [112] would result in hard feelings and I want to avoid that if I can.

(Testimony of B. T. Dyer.)

So far as selling our properties are concerned—Titus is opposed to it and I don't want you to lead anyone to think they are for sale—When the proper time comes—and we decide to sell will let you know—I have written Titus and told him my views on the proposition but have not heard from him—

Howard came here this morning. I don't know what he is here for, but will find out during the day—

Our big well is fast dropping down and will be completely cut soon—I think perhaps it is sanded—It never had a strong gas pressure—We are putting up a standard rig which will be completed during this week—We will then be able to pull the drill stem and clear out the hole—We will do everything possible to get production back—but I am inclined to believe will have to put it on the pump. It will, sure make a good pumper—300 or 400 brls—for a long time—But I hope we can make it flow again—

No. 2 well had a fishing job for a week—and now is drilling again. Should be completed before the 15th of November—we are drilling on Number one on the 80 in Section Six and will be drilling on No. 2 within a few days—We will get better wells on this property and they will stay longer—I expect from 2500 to 5000 brls on each of these wells and No. 1 will be completed by the 15th of November—No. 2 by the 1st of December.

I am afraid however that, we will be up against—over production—The pipe lines are already crowded—So we will probably have to pinch our

(Testimony of B. T. Dyer.)

wells in. We will have a big production but we may not be able to handle it—We will do the best we can however and make every provision possible to take care of it.— [113]

No. 2 well on the Giffen lease is producing—It is a better well than No. 1. We will probably have 60 brls a day from the two wells—

Now in regard to yourself—It seems to me that you should be able to get something for your California crowd and get it started before they get cold feet—or change their mind. And so long as you are located in Texas with the North Texas Supply Co. on your hands—you cannot very well start something which will take you away from there—I don't want to kick or be a grouch—but you cannot expect to make any money if you make a trip to California every 60 days. In the first place, it costs you too much money,—when you cannot afford it—and secondly—You are needed in Texas—If you get down to brass tacks—and put your head to work you will make a killing—There are plenty of good opportunities—just as good there as here—Just forget about this thing over here—I think I am capable of handling it and there is no room at present for two of us—

There is nothing in this hurrah business—there is a golden opportunity for all of us—The North Texas Supply Co. alone is a big thing and can be made a bigger one—You should take out your stock even if you have to borrow the money.—In a year or two—with 20,000 shares of stock it will

(Testimony of B. T. Dyer.)

make a hundred thousand dollars—I don't know where you can do any better on a \$5000.00 investment—Cap Lucey wants you to take it—and although there was a misunderstanding about it—I don't feel that you should hesitate—if you can get an oil Co. started along with your North Texas Supply Co.—you will have your hands full—

I don't want you to have any feeling about this—because I am the best friend you ever had—and if a friend cannot speak his mind—who can— [114]

No one can criticize your ability or integrity—I have demonstrated my faith in you—but you must quit rainbow chasing and traveling so much and get down to brass tacks— have no fault to find—with your trip to Houston and anything in the interest of your business is fine—But do not go away and leave unfinished opportunities.

This is all have to say—and want you to take it in the spirit in which I have said it—

Everything will come out fine if we all keep our nose to the grindstone for another year—We cannot spend our money before we make it.

Let me know fully what you have in mind by letter and there is anything to be done—when I can co-operate I will be glad to do it.

Soon as Emery can get away for two or three days—would like him to come over—He has never been over here—and a few days off will not hurt.

Sincerely Yours,

LARRY."

(Testimony of B. T. Dyer.)

As to the following expression in that letter, "Just forget about this thing over here. I think I am capable of handling it and there is no room at present for two of us." Doan always told me that he could handle them alone; we would divide our efforts and I would run the Texas end and he would run the Louisiana end. Doan told me to just go steady and not get into anything that we would lose in and keep in the middle of the road and we would make a million dollars at least. The Giffen No. 2 well referred to in that letter is the same Giffen lease that I spoke of as having acquired in April, 1919.

I received a letter from Doan from Houston, dated June [115] 23d.

Letter introduced as Plaintiff's Exhibit No. 8.

Plaintiff's Exhibit No. 8.

"Houston, Texas, June 23.

My dear Dyer—

I do not think you will have any further reason to complain about shipments. You will have first preference—Of course you will have to get your orders in—so they will have precedence—Carr received your order this morning for 6 rigs—Says you had better make up an order for 6 more—and keep on sending them in so that when they get to rolling you will have rigs coming all the time—and of course you will have to order your other material the same way.

Carr agrees with you that you should carry no

(Testimony of B. T. Dyer.)

dead stock—and that you should keep away from the small stuff as much as possible—except extras which I don't know anything about—

I have arranged with the Captain—so you will have the Capital Stock (50%) all paid in within the next 10 days—Pittsburgh will send you \$5000.00 Chattanooga 5000, Houston 5000 and New York the balance. Cap says they will carry you for \$10,000.000 to be turned over when the store has earned \$100,000.00. He would like you, however, to subscribe for 10,000 additional—and if you can borrow the money I would advise you to do it. I will pay mine whenever you require it—When the 50% is paid in you will be able to make a statement to banks, which will give you borrowing capacity.

Cap is very enthusiastic about your company and has given positive orders to take care of your wants.

The New Tulsa Company will only handle Standard tools—so they will not compete with you at all. Make it a point to get your orders in ahead of time—So that Houston office [116] will have no excuse.

Captain fully agrees with us that the contracting end of the business is the best end of it and wants you to go as far as you like. Of course you will have to be very careful about the men you are backing.

I will go to Wichita Falls soon as Titus and Cap leave Shreveport.

Sincerely Yours,

DOAN."

(Testimony of B. T. Dyer.)

I also received a letter from Doan dated August 7, 1919.

Letter introduced as Plaintiff's Exhibit No. 9.

Plaintiff's Exhibit No. 9.

(Letterhead of DOAN OIL COMPANY, INC.)

“Shreveport, La. August 7th, 1919.

Mr. B. T. Dyer,
Ft. Worth, Club,
Ft. Worth, Texas.

My Dear Tom—

Enclosed herewith find original appendment of Kay-Akin on the abstract of five acres in Burkburnett.

If the New York deal does not come through in a day or two I think we shall insist on Sims making a payment. If he wants additional time on the balance, we can very well afford to string it along for a little, but we should insist on a cash payment of at least half. Wire me upon receipt of this just how the matter stands.

Yours very truly,

L. E. DOAN.

LED/K, Enclosure.”

The five acres referred to in that letter applies to the Lamb piece. The Mr. Sims mentioned in that letter was going to buy the Lamb tract, but didn't.
[117]

The following letter was then introduced in evidence and marked Plaintiff's Exhibit No. 10.

(Testimony of B. T. Dyer.)

Plaintiff's Exhibit No. 10.

(Letterhead of B. T. DYER.)

"San Francisco, Feby 17, 1919.

My dear Tom—

I rang up Mr. Paul Shoup this morning and he informed me that he had answered your wire from Los Angeles—

I had a long talk with A. J. Pollok this morning. He is leaving next Friday for Houston, Texas, on account of the oil bill having passed he will soon have a barrel of money—He is going to look for something—I told him to call on Carr and to look you up which he said he would do—If you have anything good lined up it will be a good idea for you to see him and it would not be a bad idea for you to go to Houston about the time he arrives—He wants something close in—but can handle anything. They have over \$1,000,000.00 which will be released within a few days and in addition he has Pat Welch back of him—So there is no doubt about his financial ability.

I have a date with Mr. King tomorrow of the Boston Pacific—They will also have about \$1,000,000.00 released in this settlement. He is anxious to get into Texas. I may be able to handle him—Will try—

Otherwise there is nothing new—Except that I expect to get everything cleared up this week so I can be on my way.

Sincerely yours,

DOAN."

(Testimony of B. T. Dyer.)

Recross-examination.

I do not recall who was present at any of the conversations [118] to which I have referred on direct examination which I had with Doan. In our private affairs we were generally alone in the Club. My recollection is that, generally speaking, there was no other person present at these conversations relating to our private affairs.

Redirect Examination.

Letters and telegrams were then introduced by plaintiff without objection by defendant and marked Plaintiff's Exhibits 11 to 34, inclusive, and are as follows:

Plaintiff's Exhibit No. 11.

(Letterhead of DOAN OIL COMPANY, INC.)

“August 29th, 1919.

Mr. B. T. Dyer,

c/o North Texas Supply Company,

Wichita Falls, Texas.

My dear Tom:—

I duly received your letter of Thursday and wired you this morning that under the circumstances that I did not think you should expect check for your expense account. We will need all the money here that we have, and if you are in need of funds you can very easily arrange with the bank to get it.

Mr. McDevitt arrived this morning from Wichita, and he is going to locate here. I have already got him busy on several propositions. He says that

(Testimony of B. T. Dyer.)

the well on the island northwest of Burkburnett came in yesterday. Also said that another well twenty miles northwest in Tillman County came in, reported about five hundred barrels, and as you say Mr. Testerman's well is also in the sand it now looks like a sure proposition and that the oil will go across the river, and McDevitt says that our acreage in [119] section thirty is right in line, and that we should be in no hurry to sell. He also says the well being drilled in section twenty-eight, undoubtedly, lays to far north, and that it is now generally conceded that the general anticline lays farther south and directly through section thirty. I think under the circumstances we had better withdraw our forty acres from the market for the present. Please advise Mr. Couch.

In regard to Sims' deal you do not state in your letter that you have seen him at all. It looks to me like we have gone about as far with Mr. Sims as we can without having a show down, and I hope you will follow the matter up, and bring it to a head either one way or the other, and let me know as soon as possible because if he is not coming through I will have to make arrangements for more money elsewhere.

Mr. McDevitt says there are a number of wells in section seventy-four, also seventy-five, which have been drilled in two thousand feet. All of them big producers. If this is absolutely true, our piece in seventy-five may be all right. If there is any way on earth for you to find out, and get the true

(Testimony of B. T. Dyer.)

facts in regard to the depth of these wells, I wish you would do it, otherwise, I will have to make a trip there for that purpose.

Mr. Sims has made so many promises and broken them that I have no confidence whatever in what he says, and I would have no hesitancy in pinning him down.

Regarding the Testerman Lease, McDevitt informs me that suits were filed against him yesterday, and that there is no chance on earth to clear the titles on that land for the present. I am telling you this for your information. I realize that Mr. Testerman may be in a better position to know about the titles than McDevitt, at the same time I would advise you to be very [120] careful about putting any money into a lease where there is any doubt whatever about the title.

I am glad to hear that everything is going along alright, and I hope you will close the deal with Mr. Sperry for Tubbs cordage.

Our well at Bull Bayou is two thousand seventy-five feet deep this morning. They have had a lot of trouble on account of gas blowouts, but they expect to land the six inch pipe within the next four or five days. It will then take about two weeks to complete the well.

I expected to go to Wichita today, but will be unable to get away this week. When is McLain going to leave for California? I would like to put in half a day with him before he goes. However, if

(Testimony of B. T. Dyer.)

he is coming back within a couple of weeks, I can wait until he returns.

From present indications there will be a big boom in this country this fall, and I am very anxious to get as much development done as possible, because we might have an opportunity to sell some production at a big price.

Mr. Delaney spent a couple of days here, left last night for Fort Worth. He is a very fine fellow, and seems to be very much pleased with this country. He expects to return here shortly. Please follow up Sims, and let me know as soon as possible, whether the deal is off or not.

Sincerely,

L. E. DOAN.

Plaintiff's Exhibit No. 12.

Houston, Texas, Sept. 13.

My dear Tom—

Carr met me this morning at the train—We had [121] breakfast together—and had a real row—He started by saying he thought Emery should run the finance of your company and not McL. Said he wanted trade acceptance which Mc had refused—&c. Immediately got hot and told him he alone was to blame—that if he would complete your orders—so you could get your money that there would be no trouble about trade acceptances. We had it hot and heavy for a while—I told him that he had not treated Worth Texas right. That he had sold goods there and a lot of stuff—all of

(Testimony of B. T. Dyer.)

which he denied—I told him I was going to the bat on the proposition. We had a real interesting time—I also told him—Everybody was sore at the Lucey Co.—and that he alone would be blamed for it—After a while he cooled down and parted good friends—But he knows that he will have a fight when it comes to justifying many things—I thought at first that I would take it up with Captain—but concluded it would only make a row—So all I said to Captain was that I had a spirited talk with Carr—that you had been complaining that I had told Carr what I thought of it—I think you will receive a little better service—Captain is much pleased with your showing. Says it is better than he expected. Do not ever let on that you know anything about the row—I am sure that I have set Carr to thinking—and that he will not make any promises in the future that he cannot fill.

I am returning to-night to Shreveport—Captain goes to Chattanooga—Says he has the strike beaten and the shop is now 75 per cent efficient and will be 100 per cent in another 10 days.

2—5000 brl wells came in at Bull Bayou near our 80—one on the Gulf property and one on the Strange—just $\frac{1}{2}$ mile south of our 80. [122]

Remember me to Mrs. Dyer.

As ever,

LARRY.

Plaintiff's Exhibit No. 13.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La., Sept. 13th, 1919.

Dear Tom—

I had a big time with Carr over the trade acceptance—I told him that the reason you refused them was because of unfinished orders—That you could not sell the goods or get the money for them until he had completed your orders—And if I were in your place in future—I would absolutely refuse to give acceptances for any more than you actually owe for completed orders—Of course you may later have to borrow at the bank but you are perfectly safe, so long as you keep your outstanding accounts in good shape—I think you should refuse all credit except where you absolutely know parties will pay at the end of the month. Play safe.

I finally had an understanding with Carr—I told him he had been shipping goods to Wichita contrary to our agreement and that we absolutely refused to stand for it any longer—He denied of course that he had done so—I told him I was ready to go to the bat and take it up with the Captain—he begged me not to do so—and I did not—but I told Cap that I had jumped on Carr pretty hard—but I did not give any details.

Carr finally agreed to turn over some orders which he said were given before you started—he also said it would be alright for you to sell rigs anywhere—and that you could send Jimmie down here if you like—So you had better reconsider

[123] cancelling any of your orders—you can sell anything on order here—if you cannot up there—I think I have got Carr Buffaloed—I sure went after him strong—and he knows I mean it—Do not ever let on that I mentioned it.

You cannot tell the balance of subscriptions in without a meeting of the Board—and I do not think it advisable to do that—You are taking no chances if you have to borrow—but you will have to watch your stock and outstanding accounts so you will be able to meet your obligations.

If you cannot get a contract in Burke—you can get them here. However I would send your man over first—and let him close before you ship the rig—My second rig will be here by the 1st of October, and I will have two of our own going—a little later I could probably use your rig—But you will have no trouble in getting a contract—The only trouble you will have will be in getting casing.

I expect our No. 1 well in Bull Bayou will be in by the end of this week—Will let you know—I wrote you about two 5000 brl wells near our 80—Things look pretty good up there.

Cap. Lucy spoke about your stock—He says he will give you the 1000 shares—but thinks you should subscribe for 1000 more—You can easily borrow the money on the stock—and I think you had better do it—It will look better—and you are taking no chances.

LARRY.

Now that the Worth Texas is to ship the two rigs here—You had better be there and see that

everything goes out properly billed—and see that sight draft goes along with invoice—So that the rigs will have to be paid for before released by the Railroad.

DOAN. [124]

I will see if anything can be picked up in Homer. Haven't had much time to look into things up there—but will try and find something. Giffen made a sale yesterday—\$1250 commissions—of which Doan Oil Co. gets half. I will get his salary all back pretty soon.

Plaintiff's Exhibit No. 14.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La., September 15th, 1919.

Mr. B. T. Dyer,

c/o Ft. Worth Club,

Ft. Worth, Texas.

My dear Tom:—

Please find out as soon as you can when you can deliver any more rotary outfits. You had better take it up with Carr at once and find out just how many you can depend on within the next thirty days, and what you cannot handle at Wichita Falls I can sell here and get you a five per cent bonus on all of them.

Mr. Ray, our field foreman, has just received some information from a driller friend of his, who is drilling a wildcat well ten or fifteen miles southwest of Homer. It looks very much like they will bring in a well. I am going to make a further investigation and if I can verify it will let you know.

It might be a good opportunity for your California bunch and I will probably take some for the Doan Oil Company.

Our well in Bull Bayou is held up for a day or two. The contractors have shipped a new drill stem to use in finishing the well and they are unable to locate it. We are having just as much trouble here hunting freight as you are in Wichita. [125] I will let you know about when we expect to finish the well so you can come down and bring Mrs. Dyer with you.

With kindest personal regards to yourself and Mrs. Dyer, I remain,

Very truly yours,

L. E. DOAN.

LED/K.

Plaintiff's Exhibit No. 15.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La., September 19th, 1919.

Mr. B. T. Dyer,
c/o Ft. Worth Club,
Ft. Worth, Texas.

My dear Tom:

I am enclosing herewith a clipping which would seem to indicate that there is a chance for a settlement in the river front properties at Burkburnett.

We have started drilling in #1 Pugh Well, and about Tuesday next it should be completed. I told you I would let you know so that you could come over if you cared to.

It will be absolutely impossible to get any decent.

accommodations at the hotel here. The best you could probably do is a room without a bath. Even at that you would have to wire a couple of days ahead.

There is great excitement in the Homer Field. A report has just come in of a well four miles north of any production which is reported to have come in at about one thousand feet of depth.

The boys seem to be having some trouble in shipping the two rigs which I sold here. I hope you are not getting into the same habit as the rest of the Lucey Organization in making promises that you cannot fill. The parties here are very [126] anxious about the rigs. I wish you would see that they are shipped without further delay, if you have the material. If you have not got the material, please let me know so I can cancel the order.

Let me know if you are coming over the first of the week.

Sincerely,

DOAN.

LED/K. Enclosure.

(The clipping enclosed reads as follows:)

OKLAHOMA QUITTS?

Austin, Texas, Sept. 18.—Oklahoma has abandoned its claim to the oil land lying south of the center of Red River and is returning the money to those who had filed upon it under the Oklahoma Claim Act, according to unofficial, though reliable reports reaching here. The Federal government, however, it is understood, persists in the attitude

that the true boundary between Texas and Oklahoma is the south bank of the former bed of Red River.

Attorney General C. M. Cureton and Assistant General C. W. Taylor are now in Washington, D. C., and are not expected to return until early next week. They are in the national capital making an investigation of records there to establish the claim of Texas that the true boundary between this state and Oklahoma is in the center of the river bed.

There are forty-five sections of valuable oil land involved, valued at upward of \$5,000,000.

Plaintiff's Exhibit No. 16.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La., October 14th, 1919. [127]

Mr. B. T. Dyer,

Fort Worth Club,

Fort Worth, Texas.

My dear Tom:—

I am in receipt of a letter from Captain Lucey in which he advises that the North Texas Supply Company immediately vote you ten thousand shares bonus stock of the North Texas Supply Company. Captain advises that you may use the ten thousand shares as collateral on which you can easily borrow five thousand dollars to take up your subscription for the ten thousand additional shares.

I have just received your wire of the 13th. Hope you will meet with success in getting your casing, but, no doubt, you will find it a difficult job unless some of the big companies will loan it to you. Possibly you can borrow it from Pyron.

Mr. Hoover and Rowland Doan will be here tomorrow. Do not know how long they will stay, but I will try to get over to Fort Worth at the end of the week.

It has been pouring rain here for the past ten days. It is impossible to get near any of the oil fields in automobile. The roads are worse than they have ever been at any time since I came here. Our well is holding its own, seems to be improving a little. Am quite sure that as soon as we can pull the drill pipe it will come back. In any event it will pump four or five hundred barrels for a long time. Our other oil wells are progressing rapidly, and should be completed by the middle of November.

Sincerely yours,

LARRY.

LED/K. [128]

Plaintiff's Exhibit No. 17.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La. November 7th, 1919.

Mr. B. T. Dyer,
Fort Worth Club,
Fort Worth, Texas.

My dear Tom:

I am in receipt of your letter in regard to income tax.

I am already familiar with the Twenty Percent Proposition, and have discussed the matter with Mr. Titus.

While in New York, Mr. Titus and I called on

Mr. Porter and told him that we had called on your suggestion. We went more with the idea of finding out what could be done than of any definite idea of making a sale. Mr. Porter was very nice to us. Said he would be very glad to assist us in any way possible, but that it was not the policy of his organization to buy properties. They make loans and pass on propositions for their clients. After talking to Mr. Porter and several other large brokers in New York, Mr. Titus and I concluded that we are not in any position to make any proposition at the present time. In fact, Mr. Titus is strongly of the opinion that we should not sell anything. I expect him here shortly, and will go into the matter further with him when he arrives.

I am also in receipt of your letter of November 3rd, enclosing copy of your letter to Mr. Hoover. As I am not familiar with all of the details of the different transactions, of course, it would not be proper for me to take it up with Mr. Carr or Captain Lucey. I think, however, that you should stand firm. Mr. Carr positively agreed with and assured me that you could cancel any order at any time, and if I were in your place I would [129] absolutely insist on him living up to his agreement.

I have just received some letters from Stockton, and mother is very sick, and I may be called to Stockton at any time. In the event of my going I would like to have Emery come down here and stay while I am gone if it is possible for him to get away.

I received your wire in regard to returning via Fort Worth to hold a Directors' Meeting, but I had some matters here that absolutely required my attention and could not come by way of Ft. Worth. I do not know why you cannot hold a Directors' Meeting without my being present. If you will write me just what you want to take up, I will write my approval. In the event that I do not go to Stockton, I will be able to go to Fort Worth some time next week.

We are getting along very well with our additional wells and expect to have them completed sometime between the fifteenth of November and the first of December. There is so much congestion, however, that I doubt very much if we can sell any of the oil. Pugh #1 Well is only producing about one hundred barrels. On account of the rains and inability to get work done the Standard Rig has not been completed but we expect to have it completed by to-morrow and will immediately pull out the drill pipe and see if we cannot get the well back on production again. I am inclined to think, however, that it will only be a pumper as the gas pressure in that end of the field seems to have declined in all the wells.

Sincerely,

DOAN. [130]

Plaintiff's Exhibit No. 18.

(Letterhead of DOAN OIL COMPANY, INC.)

Shreveport, La., January 8th, 1920.

Mr. B. T. Dyer,
Care Fort Worth Club,
Fort Worth, Texas.

Dear Tom:

Replying to yours of the 6th inst. I will make it a point to be in Fort Worth on January 19th to attend the trial of the automobile case.

I am closing up my books and am going to close up the business of the Santa Maria Well. In looking through the papers which were shipped to me from San Francisco in that typewriter case, I find that most of the vouchers, checkbook and a lot of papers relating to the Santa Maria Well were omitted. I think they were in the safe in our office, or my desk, in San Francisco. If you know where those papers and books are located, I wish you would wire them immediately to send me all of them by express so I can clean this matter up. About the only dividend that will be paid, will be paid to Captain Lucey and that will be small. I expect Emery here Sunday, and he will leave within a day or two for Wichita Falls. When I come to Fort Worth we will talk over all our affairs. In the meantime I wish you would rush those papers if you know where they are located.

As ever yours,

L. E. DOAN.

LED/K

Plaintiff's Exhibit No. 19.

(WESTERN UNION TELEGRAM)

1918 Jul 18 AM 2 16

W. Seattle Wash 17

B. T. Dyer,

1074 Balboa Bldg

San Francisco Calif. [131]

Leaving here Friday noon Arrive San Francisco Sunday morning Titus will not be there until August first Nothing doing about Texas until he arrives Has other proposition which he thinks better Do not go until I arrive Income matter looks better.

L. E. DOAN.

Plaintiff's Exhibit No. 20.

(WESTERN UNION TELEGRAM.)

1919 Jul 16 PM 1 50

Shreveport La 251P 16

B. T. Dyer

Care W L. Luland

Balda Bldg

San Francisco Calif

Carr would like you to meet us Houston Saturday or Sunday Answer.

L. E. DOAN.

Plaintiff's Exhibit No. 21.

(WESTERN UNION TELEGRAM.)

1919 Jul 19 AM 5 12

Shreveport Lu 18

B. T. Dyer

Palace Hotel

San Francisco Cal

Better see Associated about commission Kern
Front property Papers reports Standard have
brought in big well out there There is no reason
why Associated should not pay now.

L. E. DOAN.

Plaintiff's Exhibit No. 22.

(WESTERN UNION TELEGRAM.)

1919 Jul 30 AM 6 21

Shreveport La 29 [132]

B. T. Dyer

Care North Texas Supply Co

Wichita Falls Tex.

Received wire from Carr asking me to meet you
Hoover and him at Ft Worth Friday I have wired
cannot be there but asked him to bring you all
over here free envoy (Emery) Will send my
check North Texas Supply Co Foreman (for me).

L. E. DOAN.

Plaintiff's Exhibit No. 23.

(WESTERN UNION TELEGRAM.)

1919 Aug 15 PM 6 59
Shreveport La 232P 15

B. T. Dyer
Ft Worth Club
Ft Worth Tex

If Sims does not show tomorrow better wait until you see him and get positive settlement If he asks for more time insist on substantial payment now Wire soon as you have seen him.

L. E. DOAN.

Plaintiff's Exhibit No. 24.

(WESTERN UNION TELEGRAM.)

Shreveport La Sept 12 1919

B. T. Dyer
Ft Worth Club
Ft Worth Texas.

You get four per cent above regular Lucey prices to consumer They wanted to give me commission of four per cent I told them it would be added on invoice Stop I have signed order for two rigs draft to accompany bill of lading Emery will get order tomorrow Stop Going Houston tonight Cannot see Child Stop Better keep mum about sale of rims

L. E. DOAN.

955 P [133]

Plaintiff's Exhibit No. 25.

(WESTERN UNION TELEGRAM.)

1919 Sep 30 PM 1 26

Shreveport La 1132 A 30

B. T. Dyer

Chr J. F. Lucey Mfg Co

Pittsburg Pa

Houston advises that Jones and Laughlin Steel Company will ship five cars six inch pipe commencing latter part of October Stop Very important we get confirmation Please have Hoover use every endeavor to advance shipment as soon as possible and advise me Stop Well holding up good.

L. E. DOAN.

Plaintiff's Exhibit No. 26.

(POSTAL TELEGRAM.)

Pittsburgh Pa. Oct. L, 1919

Nite Letter

Western Union

Mr. L. E. Doan

North Texas Supply Co.

Wichita Falls Texas.

Barring unforeseen troubles Pittsburgh can likely ship your entire shipment pipe this month I advise notifying Pittsburgh best shipping instructions. You may possibly want some man ride through Stop Things very satisfactory here Am writing fully Best regards

B. T. DYER.

BTD:G

Chrge Lucey Mfg. Corp.

Plaintiff's Exhibit No. 27.

(WESTERN UNION TELEGRAM.)

W WASHN DC Nov 1 1919 1006A

B. T. Dyer

Ft Worth Club

Ft Worth Tex [134]

Going New York tomorrow with Titus Pennsylvania Hotel Monday.

L. E. DOAN.

1009 A.

Plaintiff's Exhibit No. 28.

(WESTERN UNION TELEGRAM.)

1919 Nov 4 PM 2 31

PH New York NY 230 P 4

B. T. Dyer

Fort Worth Club

Ft Worth Tex

Leaving today arriving Shreveport Thursday evening Stop Nothing doing here Will go Ft Worth end of next week

L X E DOAN

Plaintiff's Exhibit No. 29.

(WESTERN UNION TELEGRAM.)

1919 Nov 8 PM 8 05.

Shreveport La 8

B. T. Dyer

Blackstone Hotel

Chicago Ill

Dunn in field with Raymond Number one doing

hundred barrels Will complete two wells about
 December first Stop My mother very ill May
 have to go California Stop Would like Every
 to come here during my absence when you you
 return Ft Worth.

L. E. DOAN.

Plaintiff's Exhibit No. 30.

(WESTERN UNION TELEGRAM.)

1919 Nov 11 PM 1 08

Shreveport La 10 via BH Chicago Ills 11

B. T. Dyer

Care Sanderson and Porter

41 William St

New York NY

My mothers condition very serious I have wired
 Emery to arrive here Thursday morning Stop
 Titus and Lucey here We have made no plans
 except to go along as usual

L. E. DOAN. [135]

Plaintiff's Exhibit No. 31.

(WESTERN UNION TELEGRAM.)

Stockton Calif 1226 P Nov 25 1919

B. T. Dyer

Vannuys Hotel

Los Angeles Calif

Cannot say whether can be San Francisco Friday
 or Saturday Mothers condition requires me here
 Write or wire what you have in mind.

L E DOAN 129 P.

Plaintiff's Exhibit No. 32.

(WESTERN UNION TELEGRAM.)

1919 Nov 27 PM 1 37

PA San Francisco Calif 124P 27

B. T. Dyer

Van Nuys Hotel

Los Angeles Calif

I will be at Palace until noon tomorrow

L. E. DOAN.

Plaintiff's Exhibit No. 33.

(WESTERN UNION TELEGRAM.)

Shreveport La 1218 P Dec 19 1919.

B. T. Dyer

Penn Hotel New York

Have obligations to meet January first can you
send me six thousand dollars advanced by me your
account Santa Maria well Answer

L E DOAN 250 P

Plaintiff's Exhibit No. 34.

(WESTERN UNION TELEGRAM.)

1920, Feb 7 AM 1 36

Shreveport La Feb 6

B. T. Dyer

Ft Worth Club

Ft Worth Tex

Our Nelson two came in Tuesday night with
enormous pressure [136] and caught fire from
electric wires We extinguished fire tonight and

saved well It is a big producer I dont know how large.

L. E. DOAN.

The property sold to Couch was purchased from Cockrell. The two checks shown me are for payment on a lease I was purchasing from Cockrell, who was the land owner in Stevens County, Texas, and is the same transaction I spoke of yesterday. The net profit in that transaction was \$7,000. No other actual money was put up except those two checks.

Checks introduced in evidence and are as follows:

Plaintiff's Exhibit No. 35.

(CHECK.)

Fort Worth Texas, Mar. 1, 1919. No. 6.

THE FIRST NATIONAL BANK OF FORT
WORTH

Pay to W. G. COCKERELL or order, \$1000.00,
One Thousand and no/100 Dollars.

B. T. DYER.

(Endorsed: "W. G. Cockerell." Pay to the order of Any Bank or Banker or Trust Co. 88-966. Mar. 1, 1919. 836. Previous Endorsements guaranteed. First National Bank, Breckenridge, Texas.")

Plaintiff's Exhibit No. 36.

CHECK.

Fort Worth, Texas, Feb. 22, 1919. No. 3.

**THE FIRST NATIONAL BANK 37-1 OF
FORT WORTH.**

Pay to W. G. COCKERELL or order, \$250.00,
Two Hundred Fifty and no/100 Dollars.

B. T. DYER.

(Endorsed: "W. G. Cockerell." Pay to the order of Any Bank or Banker or Trust Co. 88-966. Mar. 4, 1919. 836. Previous Endorsements guaranteed. First National Bank, Breckenridge, Texas.") [137]

Another check, dated March 4, 1919, was the first check paid on the 240 acres in Eastland County, purchased from Olcott, who had the lease. That was the contract introduced yesterday.

Check introduced and marked Plaintiff's Exhibit No. 37.

Plaintiff's Exhibit No. 37.

CHECK.

Fort Worth, Texas, Mar. 14, 1919. No. 15.

**THE FIRST NATIONAL BANK 37-1 OF
FORT WORTH.**

Pay to Mestre Olcott or order, \$500.00, Five Hundred and no/100 Dollars.

B. T. DYER.

(No endorsement, but stamped "PAID 3/14/19.")

A check dated June 6, 1919, was for lawyer's fee for examining title and drawing contract on the Lamb tract.

Check introduced in evidence and marked Plaintiff's Exhibit 38.

Plaintiff's Exhibit No. 38.

(CHECK.)

Fort Worth, Texas, June 6, 1919. No. 61.

THE FIRST NATIONAL BANK 37-1 OF
FORT WORTH.

Pay to JOHN C. KAY or order, \$65.00, Sixty-five and no/100 Dollars.

B. T. DYER.

(Endorsed: "John C. Kay." "88. Pay to the order of Any Bank, Banker or Trust Co. 130 Jun. 14, 1919. City National Bank, Wichita Falls, Texas." "Received payment through clearing house Jun. 16, 1919. 5. Fort Worth National Bank, Fort Worth, Texas.")

That was the same Lamb tract that was afterwards turned in to the Doan Oil Company, the same as the Oklahoma tract. [138]

A check dated March 23, 1919, was in payment of attorney's fee, approving title of the Olcott tract, 240 acres in Eastland County.

Check introduced as Plaintiff's Exhibit No. 39.

Plaintiff's Exhibit No. 39.

(CHECK.)

Fort Worth, Texas, Mar. 23, 1919. No. 22.

THE FIRST NATIONAL BANK 37-1 OF FORT
WORTH.

Pay to M. Cleberg or order \$100.00, One hundred
and no/100 DOLLARS.

B. T. DYER.

(Endorsed: "M. Kleberg." "Received Payment
Through Clearing House. Mar. 25, 1919. 5. Fort
Worth National Bank, Fort Worth, Texas.")

This paper which is handed me is in my hand-writing. Doan told me that he had talked the matter over with Titus and that we had spent a good deal of our time in connection with these properties and Titus wanted us to put our bill of expense in to the Doan Oil Company, as he was opening up the Doan Oil Company's books, and, also, it had been agreed that we would each charge half of the automobile we owned. He wanted this sent in immediately so that they could get them into the Doan Oil Company's books. That automobile was one Doan and I purchased, a Cadillac, at Fort Worth.

The document was marked Plaintiff's Exhibit No. 40.

(Testimony of B. T. Dyer.)

Plaintiff's Exhibit No. 40.

THE WESTLAND,

Harry L. Bowman, Manager.

Wichita Falls, Texas, Aug. 20/19.

Doan Oil Co.

In a/c with B. T. DYER. [139]

April and May Expenses1000.00

 $\frac{1}{2}$ Cost Automobile Cadillac1332.50

Aug. 15 Paid F. E. Couch

 $\frac{1}{2}$ Atty. fees—recording 40 acres and
 abstracting 25.00

 2357.50

That bill was sent to Doan at Shreveport.

Cross-examination.

As to Doan repaying the moneys that I expended, according to the above checks, he gave me \$625 on this Cockerell deal, which is the 100 acres in Stevens County I sold to Couch. As to other moneys being returned to me, some portion of them came out in another account, but the Oklahoma deal never came out. I received a check representing one-half of the sale price of the last parcel of the Oklahoma deal; I think it was \$2090. I have not paid any portion of that money to Doan. I kept the last check and wrote him a letter that I had received this check and that he had not stated definitely whether the Oklahoma deal was our personal deal, or whether it had gone into

(Testimony of B. T. Dyer.)

the Doan Oil Company, and I was holding that subject to our settlement. I have never received the amount of money that I claimed from the Doan Oil Company. As to dividing the profits that accrued, whenever I made a deal in which Mr. Doan and myself were interested, at different periods we would divide up. I don't recall right now ever paying any other money on account of any of these properties other than is shown by the above checks.

In the fall of last year I did go to Fort Worth and established an office for the American Oil Engineering Corporation. I put in a Mr. Spoonts, who had originally been with the Gulf Production [140] Company, as representative there. I was instrumental in having Spoonts go there and open the office there. I oversaw it. Before that time I don't recall right now that I did anything for the American Engineering Corporation. Yes, I do recall selling a Rig to the American Oil Engineering Corporation. That was in the fall of 1919. That rig was a rotary outfit that the North Texas, through me, had turned over to some drilling contractors; they were to use this rig in drilling wells, and when they made profit enough to pay for this rig, then the North Texas Supply Company, through me as their representative, and these drilling contractors, were to share 50-50 in the rig and the business. They did not make a success of their drilling contracts, and wanted to get out from under; they wound up, after a couple of holes, owing the North Texas a number of thousands of

(Testimony of B. T. Dyer.)

dollars, and they expressed themselves as wanting to get out from under. I took the question up with the American Oil Engineering Corporation, and they wanted to have a complete rig on hand in case they wanted to use it quickly, and I sold that to the American Oil Engineering Corporation, which turned around and paid the North Texas Supply Company, giving them a profit of something over \$3000, and balancing the matter up. That is the way that transaction came about. The American Oil Engineering Corporation went on and drilled a hole with that rig. We have not got our money for it yet. I had something to do with the superintending of that work in the fall of 1919. In a general way I had something to do with the superintending of that work for the American Oil Engineering Corporation. The first transaction I had with the American Oil Engineering Corporation was that I went back to buy a pipe-line for them. I was going to handle it through the North Texas Supply Company. The American Oil Engineering Corporation was going to build a pipe-line in Oklahoma and I was going to buy this [141] pipe-line for them. That was the first transaction. There was a profit, but the North Texas Supply Company did not wind up with any of it. It went to the Lucey Company. The American Oil Engineering Company might have received a profit in their contract work; I don't know what that profit was. The American Oil Engineering Corporation paid a very high price for the pipe-line.

(Testimony of B. T. Dyer.)

It was sold by the Lucey Manufacturing Corporation. In that transaction I was representing the American Oil Engineering Corporation and also the North Texas. It was agreed that we would have half of the profit, but after the deal was made the Lucey Company said that there was a very little profit in it and they took it all. I instructed the Receiver of the North Texas Supply Company when the check came in to turn it over to the American Oil Engineering Corporation, which was done after a lot of trouble. That pipe was purchased in the fall of 1919, in November.

Redirect Examination.

As to any capital stock for me in the American Oil Engineering Corporation there was held bonus stock, you might call it. When I agreed to give them such services as I could, with the understanding that after I had severed my connection with the North Texas Supply Company I would give them more time, for doing this they agreed to carry me for a portion of their stock which was being held in escrow at par; in other words, Sanderson and Porter agreed to give up any of their oil business when they joined the American Oil Engineering Corporation, and for doing that they held a one or two years' option on a block of that stock, and they told me that by my giving them this help they would carry me for a portion of that as one of their family, [142] that the amount would have to be left until a later date, but they would see that I got a good block of it at par in

(Testimony of B. T. Dyer.)

with them. I explained this to Mr. Doan, and this was agreed to be our joint interest.

Recross-examination.

After I had a conference with the American Oil Engineering Corporation, when I told them I could give them no definite answer until I talked the matter over with Mr. Doan. Then I told him of these facts, and he said he thought it was a good idea to be associated with them in that way. They agreed to carry me right along for some of this bonus stock on the same basis that they were being carried. That representation was made to me by Ben Meredith, Mr. Seaton and Hobart Porter. As to the amount of bonus stock for which they were carrying me they could not give me a definite amount at that time, but said that if I would leave it to them as gentlemen they would see that I got a good bit of it. I was not a partner with that concern, nor with those people who offered the bonus stock to me.

Redirect Examination.

I offered to divide that with Doan. I told him all about it.

Recross-examination.

As to fixing the date when I told him that, I think it was in the latter part of November in San Francisco.

Plaintiff introduced into evidence the Charter of the Doan Oil Company, Incorporated, and marked Plaintiff's Exhibit 41, and the only por-

(Testimony of B. T. Dyer.)

tions of which that may be material, show the following: [143]

The incorporators are, Louis Titus, of Washington, D. C., J. F. Lucey, of New York City, L. E. Doan, S. S. Raymond, and J. A. Thigpen, of Shreveport, La.

The business of the corporation, mainly the oil business, Capital stock was fixed at \$500,000, divided into 500,000 shares of the par value of \$1.00 each, and which capital stock may be increased to \$5,000,000. The first Board of Directors are the same as the above-named incorporators, and the first officers are: L. E. Doan, President, Louis Titus, Vice-President, and S. S. Raymond, Secretary and Treasurer. Signed June 27, 1919, and filed June 30, 1919.

Plaintiff then introduced extracts from minutes of Doan Oil Company, which were marked Plaintiff's Exhibit No. 42, certified by the Secretary. The following are such portions of said Exhibit as may be material:

"Next appears Report of a meeting held in the office of Thigpen & Harold, Attorneys, First National Bank Building, Shreveport, La., on June 27, 1919, L. E. Doan, Louis Titus, S. S. Raymond, and J. A. Thigpen being present."

"President Doan reported that (prior to incorporation) he had purchased the following oil leases which were conveyed to him as Trustee:

(Testimony of B. T. Dyer.)

Pugh lease	8,025.00	
Oklahoma Lease	8,060.00	
Burkburnett lease	40,000.00	
Comanche lease	1,000.00	
Looney lease	8,800.00	
47-acre Bull Bayou lease		
.....	3,547.50	\$69,432.50

Also that he had made the following disbursements for the benefit of the company: [144]

Looney Lease equipment ..	3,000.53	
Sundry expenses	1,614.09	
Automobile equipment	2,797.52	\$7,412.14

Also, that the Leonard Lease in Pine Island was purchased in the name of Doan Oil Company, and on which he had personally made the initial payment of \$10,000.00.

Also that he had sold the Oklahoma lease for \$8,917.50.

ee. It was unanimously voted that the above report of the President be received and that stock be issued to him at the par value of \$1.00 per share for each and every dollar he had paid out, as shown by the above report.

ff. President Doan reported Sundry Disbursements on account of Bull Bayou Wildcat aggregating \$5,359.75, which report was unaninously approved."

"Next appears the subscription agreement executed by the original subscribers to the stock of said company, dated June 27, 1919, before H. C.

(Testimony of B. T. Dyer.)

Walker, Jr., Notary Public, attested by W. B. Winston, and S. L. Herold, which shows that Louis Titus subscribed for 150,000 shares, J. F. Lucey by Louis Titus for 50,000 shares, L. E. Doan for 98,000 shares, S. S. Raymond for 1,000 shares, J. A. Thigpen for 1,000 shares.”

“Next is shown a meeting of the Board of Directors held November 10, 1919, all directors being present at which meeting the following proceedings were had.”

“A resolution was adopted in substance that the company offer for sale 100,000 shares of its capital stock at \$1.00 per share, payable one-half on or before December 15, 1915 and one-half on or before January —, 1920, and that all said stock be first offered to the stockholders as follows: [145]

50,000 shares to Louis Titus.

33,333 shares to L. E. Doan.

16,667 shares to J. F. Lucey.

and that if any stockholder failed to take and pay for the stock so tendered him that the Board of Directors would decide what further action should be taken with reference to disposition thereof.

e. By resolution the salary of President L. E. Doan was fixed at \$1,000.00 per month.

6.

“There is next shown a meeting of the Board of Directors held at the office of the company November 12, 1919, present:

(Testimony of B. T. Dyer.)

“Directors Doan, Titus, Stephens and Raymond at which the following proceedings were had:

a. L. E. Doan, Jr., was made Assistant Manager of the company, authorized to sign checks for and in behalf of the corporation, and directing the Secretary to certify the fact to the First National Bank of Shreveport.

b. President Doan reported that the corporation had the right to claim discovery re-valuation of its Pugh lease with reference to Federal Taxes and that its geologists had re-valued same at \$434,-511.00, based on an estimated oil content of 228,-691 barrels such valuation being as of date October 26, 1920.”

Plaintiff offered extract from the journal of the Doan Oil Company marked Plaintiff's Exhibit No. 43.

General objection interposed, but no objection to the form. Said exhibits are not material to the issues presented on this appeal.

Thereupon the plaintiff rested.

Defendant at this place introduced the cross-examination from deposition of EDWARD J. BUCKINGHAM. [146]

Cross-examination of Edward J. Buckingham.

I was President of the American Oil Association. At the first conversation I had with Dyer with reference to some Louisiana property, Doan was not present. He told me about one of the wells coming in and he thought it would be a good chance

(Deposition of Edward J. Buckingham.)

for me to get some acreage that they had been taking down there. Dyer said Doan was more familiar with the conditions of this tract and the location than he was and that he would rather I would come down and have a talk with him. I think this conference was in October, 1919. Dyer said he and Doan owned some five or six thousand acres out there. That same evening I went to see Doan. Dyer said to Doan, "I told Buckingham to come down and go over the situation with you"; then Doan described it and told me about the property. The next day I told Dyer I would not take it. After that conversation I occasionally saw Doan again and usually spoke to him. It was two months anyway before I saw him again. I asked Doan whether he and Dyer were still partners. I had entered into an agreement with Dyer to drill on a tract of land in Louisiana and he said he was forming a company in New York which would take it over; and I have not seen Dyer from the time that contract was taken back to New York by him and accepted and signed by the American Engineering Company, and I had an idea that they had dissolved their partnership, or were creating another organization; I had not talked with Dyer since he came back. This drilling contract was made by Dyer and taken over by the American Oil Engineering Company. It was made personally by Dyer with my company. I don't know that Dyer and Doan had any office in Fort Worth. I never say any *placate* or sign Dyer and Doan or Doan and

(Testimony of L. E. Doan.)

Dyer. I was never paid any money or check by Doan or Dyer at any time. I never had any business transactions with them that would require any consideration to pass. [147]

Testimony of L. E. Doan, for Defendant.

L. E. DOAN, called as a witness for the defendant, testified as follows:

I reside in Shreveport, Louisiana, and have resided there since about April, 1919. Before that I resided for a few months in Texas, and prior to that for many years in California. My first experience in the oil business was in 1881. I was employed at that time by D. G. Schoffield who was head of the Continental Oil and Transportation Company. They sent me to Stockton as Branch Manager and I was there three or four years, until they sold out to the Standard Oil Company. After that break in the oil business I did not get back until about 1900, and have been engaged in it practically ever since. From 1900 to 1918 I was engaged in the oil business at Bakersfield and Midway, and different fields in California. Along about 1900 I organized four or five oil companies at Bakersfield and drilled quite a number of wells in the Kern River field, and also in the Sunset field, Midway field; some of those wells, being wildcat wells, were failures, but there was one success. I think I drilled the first Sunset well that was drilled in the Maricopa Flat, the Maricopa field. Then I became engaged as a broker. The

(Testimony of L. E. Doan.)

Kern County Land Company—Haggin & Tevis—had many thousand acres of land in the Sunset oil field that they wanted to sell, and they made an exclusive arrangement with me to handle all those properties. I was handling that for some time. I sold a great many hundred acres of land for them. In that way I became familiar with the oil fields of Maricopa and Midway; I made a study of it. I was in the oil fields a great deal of the time, and I got familiar with the properties, and I commenced to interest my friends in propositions that looked good to me. I would get hold [148] of propositions, and would get options on them and sell them. While there were intervals of quiet when there was not much doing, I followed that business for many years, and sold a good many million dollars worth of property to my friends in California, and in the great majority of cases they made money out of everything I sold, because I was very particular never to present a proposition to anybody that I did not absolutely feel was good.

I purchased some properties on my own account, but my general business was in the nature of a brokerage business. I cannot recollect exactly when I first met Dyer. My first remembrance of him was in Bakersfield, I think in 1907 or 1908. He was associated at that time with Leland. I used to see Dyer very frequently at that time, but had little acquaintance until some years afterwards. I became better acquainted with him along in 1914 and 1915, when we became very well ac-

(Testimony of L. E. Doan.)

quainted. Along in 1914, 1915 and 1916, during the time of the big controversy between the United States Government and the oil men of California over the located lands in Kern County, a great many of my friends were interested in the located lands down there, and I was interested to some extent; at that time the Government had commenced to take a lively interest in the matter, and it became evident that some measure would have to be adopted for the protection of the owners of those lands, these locators, otherwise the United States Government might confiscate the whole thing. So, in conference with a number of my friends I volunteered to get an organization together for the purpose of sending a number of oil men to Washington in order to get legislation to protect the oil men of California. I worked, I guess, a solid year on that proposition. I traveled all over California, at my own expense; I held mass meetings in the oil fields, and interested the oil men of California [149] until finally I perfected an organization; I got nearly every oil company in California interested in that organization.

The first business transaction Dyer and I ever had together was after we got offices together. Before we had offices together, I used to meet Dyer frequently at the Palace Hotel in San Francisco, where both of us made our headquarters. The first that I recall is that Dyer met me one day and proposed that we go into partnership. He said, "Larry, I would like to go into partnership with you; I would

(Testimony of L. E. Doan.)

like to go in with you." This was along about 1915 or 1916. I told Dyer I did not want a partnership with anybody, but that there was no particular reason why we should not do business together in a great many different ways whenever the opportunity came along, so it was arranged that we get offices together. Dyer already had offices in the Balboa Building and he asked me if I could not join him there, which I did. I had no arrangement with him other than we were operating separately and distinctly. We just had offices together in the same three rooms. Dyer's name was on the door, and also mine. He occupied one room and I another; we had a joint entrance room, stenographer and typewriter. We joined in the office expense and settled those expenses every month. We never had a joint account anywhere. While we were in the Balboa Building we were jointly interested in several deals. The first, I think, was with the Associated Oil Company. They wanted to get some lands and I told Dyer if he knew of anything and could get hold of it I would turn it over to the Associated and would divide the profit with him. This I did. During this time I made independent investments in which Dyer had no interest at all and Dyer also did so. There were several deals made on which we divided commissions during that time. When I first went in there [150] I was engaged as manager and one of the owners of the Casmalia Syndicate, a corporation doing business in the Santa Maria field, and it required a great deal of my time.

(Testimony of L. E. Doan.)

In 1918 there was a great excitement in Texas. Oil had been discovered in the ranger field and the papers were full of it. Dyer was one of the first who wanted to become interested in Texas. He went there in the summer of 1918 and wanted me to go along with him and I told him that I could not go; that I had much unfinished business in California and could not get away. He went back and sent me many telegrams urging me to come on, but I could not go at that time. I have not those telegrams for the reason that when our offices were closed in the Balboa Building I was in Texas and Dyer had come out to California. I instructed him that, so far as my interests were concerned in the office, to sell my furniture and box up and send my papers and files to Texas. When I had gone to Texas I had taken my books of account and things of that kind with me, but I left many files, all, in fact, at the Balboa Building office. Upon Dyer's return from Texas he told me there was a wonderful opportunity there to make money and wanted me to go back with him, but even at that time I could not go, so he returned to Texas. I told him that I would go back as soon as I got my affairs in shape. I told him that I would go back and look the situation over before I would determine on whether I would become interested, or not, that what little money I had I was afraid I would lose it; I had been in the oil business a great many years, and I did not want to invest my own money in oil operations, because

(Testimony of L. E. Doan.)

even where the opportunities are the best it is a hazardous game, and that I would go back and look the situation over before I would determine on whether I would do anything else. I did not make the following statement to Dyer: "You go back [151] there and I will follow you up and we will hit the ball and make some money and divide the profits." I absolutely had no agreement with Dyer before I went to Texas whatever as to any business and there was no understanding whatever except that I was to go back to Texas. I left for Texas the latter part of October, 1918. My recollection is that I met Dyer in San Antonio, Texas, the latter part of October or the first of November. We had some transactions in Texas. The first occurred in November or December, 1918. That was the deal for the purchase of eight or ten thousand acres or leases in Bosque County. Dyer asked me if I would not purchase this lease from a man named Pyron and if I did not think it would be a good buy, so I purchased the leases and paid Pyron 50¢ an acre. The leases were assigned to me and I advanced the money. I told Dyer that after the leases were sold and I had my money back that I would give him one-half of the profit on that deal. The leases were subsequently sold by Dyer. I was in California at the time. They were sold in my name. I gave Dyer a power of attorney to sell before I left. I told Dyer to go ahead and use his own judgment and sell the leases. He sold them to the Gulf Production Company at a profit, I

(Testimony of L. E. Doan.)

think, at \$1.25 an acre. When I returned Dyer gave me a check for what I had expended on the leases and one-half of the profit over and above that.

The next transaction was a deal in Stevens County, Texas. I was in California at that time. Dyer wired me about the property and I had become familiar with the district before I left. That wire was in the files at the office at the time I left and Dyer closed the office and never has sent me those files to this day. That is why I have not any of those telegrams. The contents of that wire, as near as I can recollect, were that he [152] wanted to get my consent to purchase that property and I wired him back, "go ahead." It would involve about \$20,000. He wired me that he thought he could sell it before the second payment would fall due. I wired him that I expected that he would have to put up the balance of this money, that I was prepared to do it, and for him to make the first payment; this he did; he paid \$1250. Immediately upon my return to Fort Worth I paid him \$625, which was one-half of the initial payment. The property was sold to Couch before the next payment became due. There was a profit earned and Dyer gave me a check for one-half the profit. I don't recollect any expense connected with that transaction. The only expense connected with it was taken out of the settlement, whatever it was. I had no expense.

The next transaction was the Eastland County deal with Olcott for 240 acres of land. I

(Testimony of L. E. Doan.)

believe he paid \$65 an acre for it. Dyer paid \$500 as option money and I gave him \$250 of it back. Later on I paid \$15,100 as a full payment for the full property. I told Dyer that I would divide the profits with him on that deal. The property was sold by Olcott, the man we bought it from, to other people. The money was returned to me and the profit was divided with Dyer, less his expense and attorney's fees. I think he paid \$100 attorney's fees for examining the title; he took that out. I did not deduct any of my expenses.

The next venture I think was the Oklahoma five-acre piece. I mean the Burke-Burnett five-acre piece. \$40,000 was paid for that. I paid the money. Dyer did not advance any. It was subsequently sold for \$50. Title was invested in my name and I afterwards transferred it to the Doan Oil Company, and the Doan Oil Company sold it for \$50. With reference to the purchase of that tract, that transaction happened in this way. There was an [153] enormous pool in the Burke-Burnett field, what was known as the Burke-Wagner well and several other big wells had been drilled at different points in this field, and there were wonderful producers, 2000 and 3000 barrels, in it, in shallow territory. A well had been drilled in Block 75 in which this five-acre piece was located, producing about 3000 barrels a day. A man by the name of Lamb came to me in Fort Worth, he had an option on this five-acre piece, and asked me to become interested in it. I was unable to go to

(Testimony of L. E. Doan.)

Wichita Falls at that time, however, for some reason or other, so I asked Mr. Dyer to go up and look this property over, and ascertain beyond doubt if it was an absolutely sure piece of property as we were paying \$8000 an acre for five acres of land, and I wanted to have the "dope," as we call it, on all the surrounding wells; I wanted to know what, if any, salt water wells or dry wells were drilled in that vicinity, and I sent him up there to get those facts, and I told him that if he found that there were no salt water wells, and if everything was absolutely all right, that I would buy the property. He got me on the telephone the next day after he got up there. He told me that he had investigated, and that there was absolutely no reason in the world why the property should not be good, so I authorized him to draw a check of \$10,000 on my account. Dyer requested me especially that he would like to have it appear that he was making this payment; he did not have the money, and so I arranged with him that he could draw a check when he got up to Wichita Falls for \$10,000, and I went to the bank, the First National Bank, and told them to honor that check of Mr. Dyer's on my account when it came in, and it was charged to my account. I made the further payment of \$30,000. That happened about two weeks later. In the meantime I went up [154] to Wichita Falls and was there on the day this \$30,000 fell due.

Dyer, my son and myself went out to the property. We had talks all day about it. I asked Mr. Dyer

(Testimony of L. E. Doan.)

what was the latest dope on the offset well that was being drilled adjoining this property. Mr. Dyer told me that he had gotten very close to those fellows up there that were drilling that well, and that he had been with them constantly, and that while the well was apparently down to the depth where it should have been a finished well, that they claimed that they had not got into the oil section, they were about to get into the oil sand, but they had some little trouble, and Dyer said that he was absolutely sure that they were telling him the truth about it; he took me out and introduced me to the men and I talked with them myself. I told Dyer that I was afraid those fellows were stalling, but he assured me that he did not think so; we talked about it several times during the day, and I waited until the bank was about to close at 3 o'clock, and finally I went in and made the payment. Dyer did not have anything to say to me to the effect that he was advised against paying the remainder of that \$30,000. He did not at any time during that day advise against completing that transaction. Dyer never paid any part of the \$50,000 that was invested in Burke-Burnett.

The next transaction was the Oklahoma deal. It was a purchase of a half interest in eighty acres with Mr. Couch in Tillman County, Oklahoma. Mr. Couch had made a deal for the purchase of 80 acres of leases in Tillman County, and offered me an opportunity of going in with him on the purchase of that land; he had already purchased, as he had

(Testimony of L. E. Doan.)

already paid \$1000 as good faith money, and there was some few days left in which to pay the [155] balance of the purchase price; it was a cash transaction; so I told him yes, I would take it.

Q. (Mr. METSON.) You told whom?

A. I told Couch—I am not positive whether the conversation was directly with Mr. Couch or whether Mr. Dyer took it up with him. Mr. Dyer might have been with Mr. Couch at the time; I don't remember about that. But anyhow, I told him I would take it, and when this balance of the purchase price, \$8060, fell due, I agreed with Mr. Couch I would go up there and see the attorneys, and if the title was all right, that I would pay this purchase price, I would pay this \$8060, and he would refund me the difference to make up his half; he had already paid \$1000; so I went up there and the title was all right, and I finally purchased it. I paid \$8060, and Mr. Couch subsequently refunded me, I think, \$3530, which left the purchase price for my half about \$4600, something like that, \$4630, I think. At the time this property was purchased, I told Dyer that if there was a profit made that he would share in the profit. It was transferred to the Doan Oil Company.

As to other transactions in Texas in which Dyer was interested the only one was the North Texas Supply Company. Dyer offered me many propositions in Texas which I rejected. Those were all that were consummated in which he was interested.

In April and May, 1919, I went to Louisiana and

(Testimony of L. E. Doan.)

purchased 40 acres in the Bull Bayou field, the Pugh lease; I purchased it from Clark and Greer. I didn't say anything to Dyer about that purchase prior to its acquisition. I paid the purchase price with my own funds. While I was in Texas, before I went down to Louisiana, I had one or two independent transactions in which Dyer was not interested. I made a purchase or gave \$1000 to the Wehr-Haywood Syndicate for an interest in their syndicate. Dyer never became interested in it; he never gave me any of the money; [156] he never offered to pay me, and nothing was ever said whether he was interested or not. As to the Louisiana purchase I don't know how long afterwards I communicated that information to Dyer. It was my recollection that Dyer was in California when that transaction happened. Titus and Captain Lucey were interested with me in the Louisiana purchase. Lucey was not interested at the time it was made, but subsequently became so. Mr. Titus was. I returned to Texas two or three days afterwards. I conversed with Dyer with reference to the Louisiana purchase in May, 1919. I don't remember any specific conversation. Some time in April or the first of May, I told Dyer that I was going to operate in Louisiana in association with Titus and that that proposition in Louisiana would be on an entirely different basis from anything that had been, that we had talked about before, any deals we had before—that Mr. Titus would be interested in everything with me in Louisiana. Dyer at that

(Testimony of L. E. Doan.)

time did not say anything with reference to any interest he might have there. As to any conversation in which I advised Dyer that I was not going to operate further in Texas. I told Dyer that on account of the business subsiding, that the excitement was over, that it was a dangerous thing to speculate in leases, that I had about concluded that I would not venture any further in that deep territory, that I was afraid we would not be able to sell any leases, and I concluded that I would not put any more money in. About that time Titus came out to Texas. Titus, Dyer and myself made a trip through the Texas oil fields for three or four days. Dyer was with us on the entire trip. I don't think there was any conversation at all in regard to Louisiana on that trip. Shortly after the middle of May, Titus and myself went to Louisiana. No, Dyer did not accompany us. He knew we were going. He was not [157] invited to go. Titus and I spent several days in Louisiana and bought an additional piece of property and bargained for a third piece. We bought one piece for \$110,000. We made a payment of \$10,000. I gave a check for it with my own money and some money Titus gave me. I credited in my own account, the whole thing, as trustee for Mr. Titus and myself at that time. The balance of the \$110,000 was paid by the Doan Oil Company, I think. There might have been another payment made by me, before the Doan Oil Company was organized, but the books will show. Dyer paid no part of the purchase price

(Testimony of L. E. Doan.)

and had nothing to do with that transaction. Dyer never had anything to do with any transaction in Louisiana, because I told him that I was not going to take him to Louisiana and I did not want him down there, and he was never permitted to go to Louisiana. I told him that several times. The first time was when we talked about the 40-acre proposition. That must have been early in May. As to the North Texas Supply Company being organized; immediately after being with Titus in Louisiana I returned to Fort Worth and met Lucey there. Lucey, Mr. Carr, my son and myself made a trip to Wichita Falls. We arrived there in the morning and returned to Fort Worth that evening. It was the latter part of May, 1919. When we returned to Fort Worth we met Dyer in the Fort Worth Club. We went into his room immediately from the railroad station. It was seven o'clock in the morning. The first thing that was said was by Captain Lucey. He addressed Dyer as, "Good morning, Mr. President." Mr. Dyer said "What are you talking about, what do you mean?" Mr. Lucey said, "We have made you president of a supply company, we are going to make you president of a supply company." Mr. Dyer said, "Well, I object, I will have something to say about that, I do not want to go into the supply business." Mr. [158] Lucey went on to explain that he had gone to Wichita Falls, and he had come to the conclusion that Wichita Falls was one of the best places in the United States for a supply house for oil opera-

(Testimony of L. E. Doan.)

tions generally, and that he had outlined a plan with me for Mr. Dyer which would be of great benefit to Mr. Dyer, and that he hoped that he would find his way clear to take advantage of it. As to details, he said that we had concluded to form a corporation of \$100,000 capital, of which \$50,000 would be paid in, and concluded to make Mr. Dyer president and manager; that he would take 20,000 shares of the stock and pay in \$10,000, and wanted Dyer to take 10,000 shares, and he wanted me to take 10,000 shares; he wanted Mr. Titus to take 10,000 shares, and the balance of it would be distributed to his subsidiary branches, to his different branches; he wanted his employees to become interested in the company. Captain Lucey said that if we organized the company that he would back it up with almost unlimited credit, put it in a position where it would make money, a lot of money, and said there was no reason in the world why a supply house up there could not make all the way from \$10,000 to \$25,000 a month, even on a capital of \$50,000, with the backing that he would give it. I told Dyer he would have a salary of \$500 a month. He told Mr. Dyer at that time—he said, “Tom, you have often expressed a desire to become associated with me in business”; he said, “This is your opportunity.” He said, “You have been knocking around the oil fields for a great many years, and you have not landed anywhere, and you have not been able to make a success, and you are now arriving at a time in your life when you ought to save something

(Testimony of L. E. Doan.)

for your family, and here is an opportunity where, with a little investment here you will soon acquire a substantial interest which will earn you an income sufficient to support your family, sufficient [159] for all future wants. "Mr. Dyer did not seem to be persuaded. Dyer said he did not like the supply business, he said that he was an oil man, and did not like the supply business. I joined in the conversation and advised Mr. Dyer to accept the proposition. I had a further conversation with Dyer on that day. Just Dyer and myself were present. I told Dyer that during this trip to Wichita Falls I had talked to Captain Lucey and Captain Lucey had wanted to join Mr. Titus and myself in these Louisiana oil operations. I told Tom I had absolutely concluded that he could not go to Louisiana, that this was an operation for Mr. Titus, Captain Lucey and myself. "Now, I says, "Tom, you have got a crowd of fellows from California, and you have \$50,000 subscribed for an oil venture in which they have agreed to carry you for a quarter interest," and I says, "Captain Lucey has expressly stated in this agreement if you will go to Wichita Falls that he will not object to your indulging in oil operations where it does not interfere with the operations of the company; you can organize this \$50,000 oil company, and with your 10,000 shares of stock in the North Texas Supply Company"—and Captain Lucey had agreed also with him that if he remained there and handled the business and carried out the contract, that he would be entitled to a

(Testimony of L. E. Doan.)

bonus of 10,000 shares of stock in the North Texas Supply Company—if he remained there until the company had earned \$100,000 and was taken over by the Lucey Company—if it was taken over by the Lucey Company—if he would remain there until that time. I said, “Tom, there is a wonderful opportunity for you; there is no question in the world but what this North Texas Supply Company will make a lot of money. Now, if you will go up there and do all these things, organize this California Oil Company, organize two subsidiary drilling [160] companies and rig-building companies, which Captain Lucey was very insistent upon at that time, in order to create a market for his supplies, and also to make a contract on these rig-building companies—“If you will go up there and do all of these things,” I said, “Tom, I will tell you what I will do; By George, I will carry you for an interest in Louisiana.” I went on further and said, “Now, I am not going to tell you what that interest will be, Tom.” I said, “You know that I have got a controversy on with the United States Government over taxes”; there was a controversy in regard to about \$50,000 of income taxes, that I didn’t know but what I would be called upon to pay it, and I said, “I cannot afford to jeopardize my personal interest in any way by tying up to you or anybody else until I know where I stand, because I have got to be in a position at any moment to raise this \$50,000, if the Government calls upon me for it; I

(Testimony of L. E. Doan.)

have got to keep my securities intact; but, however, if the Louisiana venture is a success and you go to Wichita Falls and carry out your contract, I will carry you for an interest in Louisiana." After a few minutes he said, "By George, I will do it." I said, "Tom, don't you go there now unless you have absolutely made up your mind you will go there and stay there, because," I said, "you know you are in the habit of traveling around the country a good deal; we want you to go there and live there, and make that your headquarters—not only make it your headquarters, but you have got to stay there and take advantage of the opportunities as they come along." And he said he would do it. The company was formed immediately afterwards and Dyer went to Wichita Falls. He remained there about two weeks and then went to California where he remained in the neighborhood of three weeks. He made two or three trips to California during that same year and made [161] several trips East. I know that he was absent from Wichita Falls the greater part of the time. He did not form the subsidiary companies of the North Texas Supply Company. He formed one, but he didn't form the Rig Company or a drilling company and he did not form his California Oil Company. I think it was on January 21, 1920, that Dyer first told me he had become associated with the American Oil Engineering Corporation. That was at Fort Worth. He said that, he demanded of me to settle his interest in the Louisiana field; he wanted to

(Testimony of L. E. Doan.)

know what his interests were in the Louisiana operations; he wanted them settled. Previous to this time Mr. Dyer and I had had many controversies. Dyer told me at that time that he had accepted employment, that he had accepted a retainer from the American Oil Engineering Company, and they were paying him \$1000 a month, or had been paying him \$1000 a month to look after their interests in Texas. Well, I protested and told Mr. Dyer that it was a violation of his contract with the North Texas Supply Company, that he had not organized his California Oil Company, that he had not done any of the things that he had agreed to do when he went to Wichita Falls, and now this was the last thing, the last straw that he had accepted employment with another company, which he should not have done under any circumstances without taking it up with the Board of Directors of this North Texas Supply Company and getting my consent to it. Well, he said that these folks were going to put a million dollars into the oil business, and something of that kind, and he thought it would be a great opportunity. I told him I did not care anything about it at all, and after a very heated discussion—Dyer and I had a very heated discussion at that time, and we had had previously, over the same argument, Dyer made a demand on me for a half interest in [162] my interest in the Doan Oil Company at Shreveport, and I told him that he was not entitled to anything. I said, “Tom, you have not carried out your agreement in any particular;

(Testimony of L. E. Doan.)

you did not go to Wichita Falls; you did not stay at Wichita Falls; you did not organize your California Oil Company; you did not take your stock in the North Texas Supply Company; you did not earn your bonus stock, and you are not entitled to anything; Tom, you are not entitled to absolutely anything." I said, "I wanted you to make some money, I wanted to help you, that is the reason I wanted you up there; I wanted you to make some money and build you up." Well, we had very hot words over the proposition, and finally Tom said, "I can raise the money to take my interest in the Doan Oil," and said, "I have always been ready to do it." I said, "You have not been ready to do it, and you can't do it, and you have never offered to do it." I said, "I will tell you, Tom, I am hard up right now, I have got to borrow some money, if you will pay me the money that you owe me, that I advanced you in California before you came out here, if you will take your North Texas Supply stock, get that North Texas Supply stock that you subscribed for and pay me \$1 a share for the Doan Oil Company, the same as I paid for it, I will give you 50,000 shares of stock." He said, "All right, I will do it." He sat down and wrote me out a check for \$3000 on the payment of the back indebtedness, that Tom had owed me on money that I had advanced him in California; he told me he would send me the rest of the money the next day, \$3000 more the next day, that he would immediately go to California and get his North Texas Supply stock and all that stuff.

(Testimony of L. E. Doan.)

So, relying on that proposition, I felt really relieved, because the thing had worried me; I was pretty worried. I did not want to have any controversy with Tom; [163] By golly, Tom and I had been very intimate friends for a good many years; I did not want to have any controversy with him. So I told him if he would send that money the next day and get this North Texas Supply stock, that I would let him have 50,000 shares of the Doan Oil Company. Tom said at that time, "I was expecting to send you this \$6000, because, he said, "I owe it to you; it was a loss that we made in this money you had advanced in the Doan Syndicate at Santa Maria, and it was a loss, and I have already charged it off in my income statement, \$6000," and he said, "I was going to send it to you anyhow, because I have already charged it off." So he did not send me the money. Two or three days afterwards I received a letter from Dyer.

The letter was offered in evidence as Defendant's Exhibit "C."

Defendant's Exhibit "C."

"AMERICAN OIL ENGINEERING CORPORATION.

56 Broadway,

New York.

Fort Worth, Texas, January 21st, 1920.

Mr. L. E. Doan,
Merchants Building,
Shreveport, La.

Dear Larry:—

I am going to hold off the getting of the \$50,000.00 until the last minute after you have had your meeting with Mr. Titus and decided on your policy. I will not do this to inconvenience you but for the purpose of being guided in getting my money. It will of course be necessary for me to give up a small piece of it in order to get this money but should you decide on a sale policy, either of land outright or stock that would reimburse present holders, I naturally would want to take advantage of that and not give up any interest other than is necessary.

This feature dawned on me after you left last night and I wanted to explain it to you for your approval.

We are having another rotten day' with a cold rain [164] and some sleet. I am leaving for Wichita falls tonight.

You will possibly remember that Messrs. Heyd-
rick and Couch drilled a well in West of Grand-
field some years ago and encountered a small sand

(Testimony of L. E. Doan.)

with an oil showing but nothing of commercial quantity. Mr. Hoffer informed me this morning that he and the Humble Company were of the opinion that that is about all the present wells amount to that have been so highly advertised. He will have the detail information in a few days or two and offers to give it to me. I will try and get some accurate information if possible and act accordingly.

With best regards, I am

Very truly yours,

DYER."

BTD/H.

I made a reply to that letter.

Letter introduced as Defendant's Exhibit "D."

Defendant's Exhibit "D."

DOAN OIL COMPANY, INC.,

Merchants Building,

Shreveport, La., Jany. 23.

Dear Tom:

I am in receipt of yours of the 21st and will state that there is no possibility of our making a sale of any property within the next few months. If we do the money would not go to Stockholders, but would go into the treasury for expansion purposes.

If you are unable to arrange for your money by the first of February we will have to change our plans somewhat because—I will have to raise some money at that time and I am depending on you.

(Testimony of L. E. Doan.)

Let me know at once so I can make my arrangements accordingly.

Titus has postponed his trip for a few days.

If you have to give up one quarter to raise your money I will do it for you on the same basis.

Let me know by return mail what you want to do about it.

Sincerely yours,

DOAN." [165]

I received a letter from Dyer as follows:

Letter introduced in evidence as Defendant's Exhibit "E."

Defendant's Exhibit "E."

**"AMERICAN OIL ENGINEERING
CORPORATION.**

56 Broadway,
New York.

Fort Worth, Texas, January 26th, 1920.

Mr. L. E. Doan,
Merchants Bldg.,
Shreveport, La.

Dear Larry—

I have your letter of the 23d and I explained to you when you were here, it was agreed that I could obtain this money by giving the one-fourth interest mentioned. You ask me to write by return mail and state that you would do this on the same basis. If this is agreeable I would much prefer to handle the matter together with you on this basis as it

(Testimony of L. E. Doan.)

would eliminate having any outsiders or any complications. If this is agreeable to you, please drop me a line and I will go no further to obtain this money on the outside.

I want this absolutely agreeable to you either way and if you prefer to have me get the money advise me and I will get it at once.

I have been about sick with a touch of the "Flu."

Please advise me, and with kindest regards, I am,

Very truly yours,

B. T. DYER."

BTD/H

I also received a letter from Dyer—marked Defendant's Exhibit "F." [166]

Defendant's Exhibit "F."

**"AMERICAN OIL ENGINEERING
CORPORATION.**

56 Broadway,

New York.

Fort Worth, Texas, February 9th, 1920.

Mr. L. E. Doan,

Merchants Bldg.,

Shreveport, La.

Dear Larry:—

Mr. Couch has given me a check for \$2700.00 which is one-half of the selling price of twenty acres out of the Tillman County property. As I understood it this went in to the Doan Oil Company. Will you please advise me if this is correct?

If not it will belong to us. I am endorsing same to the Doan Oil Company. The balance of this lease was sold in two pieces, one of 20 acres and one of about 15 acres. The remaining fifteen acres has been sold and a payment is up on it, but the buyers are trying to back out, all the excitement having died out in this locality. In the new survey it develops that there were only 35 and a fraction acres instead of 36.6. There is a payment of \$2500.00 up on the balance of the acreage and I will advise you as soon as the matter is settled.

I have not had a letter from you in answer to my last letter asking if it was agreeable as you had mentioned on the carrying of my Doan Oil Company interest. When you get time I would like to know how things are going with you.

I have just completed the purchase of a dandy lease in Stephens County for my New York friends having paid \$1,000,000.00, one-half cash, for a fine piece of ground. One well producing 1600 barrels daily and three wells are drilling. Things are going satisfactorily at ~~Fort Worth~~ Wichita Falls.

deals

I have made no ~~terms~~ on our personal account but I am working on a good one at the present time and will advise you what happens.

Please acknowledge attached check and also if this is Dean Oil Company money.

Very truly yours,

B. T. DYER."

BTD/H.

(Testimony of L. E. Doan.)

“When your bookkeeper makes his statements ask him to send me one please.”

After I received these letters from Dyer I discussed them [167] with him at Shreveport some two or three weeks later. Mr. Dyer came to Shreveport and came to the hotel that I was stopping at, the Ury Hotel, on Sunday morning, when I was having breakfast; he came into the dining-room and sat down and said, “I have got a 40-acre proposition over in Oklahoma, and want to borrow \$40,000 on our Doan Oil stock,” he said, “to cover this proposition, to take this proposition up.” I declined the proposition.

Q. What did you say?

A. I absolutely refused, told him that I would not consider the matter for a minute, for the reason that he had not complied with his compromise proposition; he had failed to send me the money that he owed from California, which he promised to send me the next day after the talk we had at Fort Worth, and had made no arrangements about getting his North Texas stock; so I just told him, “You absolutely failed to carry out your compromise proposition, and it is all off.” We got into a very heated discussion, and I got very angry, and I used some language that I should not have used, and which I afterwards apologized for; I sent Mr. Dyer an apology for the language I used. He replied at the time, “You are a hell of a partner,” something like that and walked out. As to the conversation

(Testimony of L. E. Doan.)

held in March or April, 1919, at Fort Worth, which De Sallier testified to in his deposition, I recall that conversation. I did not make the statement that "I could not reach any decision and for him to see Dyer, my partner." What I did state at that time was in substance a great deal of what he has said, except that I did not use the word "partner"; I studiously, I never have used that word in any business transaction that I ever had, because Mr. Dyer and I were not partners, and we understood it that way.

As to the conversation testified to by H. F. Berry at Shreveport [168] in 1920, at my office, I recall that conversation and I did not say my "partner."

At this point the cross-examination of L. E. Doan was deferred pending the examination of other witnesses.

Testimony of Louis Titus, for Defendant.

LOUIS TITUS, called as a witness for the defendant, testified as follows:

I reside in San Francisco and am engaged particularly in the oil business in California and Louisiana. I have been engaged in the oil business twelve years. I recall a trip to Texas with Dyer and Doan early in May, 1919. I went to Fort Worth and met Doan there. We went to Wichita Falls that same night and the next morning met Dyer. Either Dyer or Doan had an automobile, and we spent the better part of three days driving around the country

(Testimony of Louis Titus.)

looking at various oil fields and properties. That was after the first purchase of 40 acres in Louisiana. I discussed in the presence of Doan and Dyer matters relating to Texas oil properties. We had a conversation for three days about various oil properties in which Dyer and Doan were interested in Texas, but there was no such conversation concerning properties in Louisiana. There was discussion with regard to the 5-acre Burke-Burnett tract. That was subsequent to its purchase. Dyer told me that he thought it was a very wonderful piece of property, that he was in very close to the men who were drilling the offset well, and that he was sure he had the right dope on that well, and that they assured him they had a very splendid showing of oil in that well, and he thought this five acres was a very valuable property. I know the time that I met Dyer at Wichita Falls was in May of last year (1919), I met [169] Dyer in San Francisco after he had been through the Texas fields with Doan and myself; that was in July of the same year, 1919. I saw him in my office. I had no conversation with him relating to Louisiana oil properties. He had nothing to say to me with reference to Louisiana properties which had been acquired by Doan and myself. He stepped into my office, and I said to him, "What are you doing here, I thought you were in Texas?" He replied that he had some affairs to attend to, and he had come up to California. I said, "Are you going to stay here long, and when are you going back to Texas?" And he replied, "I do not

(Testimony of Louis Titus.)

want to go back to Texas; I want to go to Louisiana, but Larry won't let me go; he wants me to stay in Texas." That was the extent of the conversation concerning that subject.

Cross-examination.

I went to Shreveport or to Fort Worth first and then to Wichita Falls. We took an automobile and went up to Burke-Burnett fields, where this five-acre tract is, and from there we went to the various oil fields; we spent two days and tried to spend part of another day, but the rain was so heavy we could not get around with the automobile the third day, and we finally took the train back to Fort Worth and left the automobile here. From there I went to Shreveport with Doan. That was not my first trip to Texas, but my first trip to the oil fields. I had sent some money to Doan and I understood that I was interested in the Lamb piece. I could not tell how much I had supplied to him. I think at that time I had sent Doan \$20,000. I did not send him this money for the Lamb piece; I just sent him \$20,000 to be used in the oil game. That was at his request and at my request, too. I wanted to do it and he wanted me to do it. He had [170] been requesting me to go into the oil game. That money was sent probably a month or so before I went down there. I had never been to Shreveport before this time in May. I did not send for Dyer to come to my office. I think it was in July of the summer of 1919, when he was in my office. I did not in that conversation

(Testimony of Louis Titus.)

say to Dyer, "Why are you not down in Texas?" or "Doan needs you," or "I am going down there and I am going to have Doan send for you at once because you should both be there together."

At this point there was called out of order a witness on behalf of plaintiff.

Testimony of Leslie I. Coggins, for Plaintiff.

LESLIE I. COGGINS, a witness called for the plaintiff, testified as follows:

I reside at San Francisco; have been in the brokerage business the last month, New Orleans oil business. I know Doan and Dyer. I saw them in Texas in 1919, I think, around May. I remember an incident when we were taking a trip in an automobile together. Mr. Martin and myself went up to Wichita Falls and we met Mr. Doan and Mr. Dyer, and we took a ride out to see the field, to take it all in. Mr. Martin was there for the purpose of acquiring some land for the Texas Oil Exploration Company, and Mr. Doan and Mr. Dyer invited Mr. Martin out to see some of the property that they owned, saying they owned a five-acre piece there; that they owned together this here five acres, and said, "Mr. Martin, this would be a good place to get in and get some land around here, it is a good spot to get some," and coming back in the automobile we looked across the country, and were talking oil, and everything like that, and said, "It looks like it will run across the river into Tillman County," and coming back in the car Mr. Doan, or Mr. Dyer

(Testimony of Leslie I. Coggins.)

said, "Well, Mr. Martin, [171] some day, you see those tank cars over there, you will see our names on them, 'Doan & Dyer'; we will get it right up here in this little field." We went back to Wichita Falls. Mr. Martin and I left from there and went to Fort Worth.

Cross-examination of L. E. DOAN.

I have talked this case over with Mr. Titus; he is not one of my counsel; he has and still is representing me in a tax difference with the Government, but not in this matter. He has not advised with me at all in this case. I remember when he was in Fort Worth the latter part of May, 1919. It was after the second payment on the purchase of the Burke-Burnett property. He was there at the time the North Texas Supply Company was organized. He had been there about two weeks or ten days before. I met Captain Lucey at Wichita Falls after I parted from Titus. I parted from Titus on that trip at Shreveport. He did not go back to Fort Worth. He left either for Washington or California. I am not sure which. I cannot think of any deals that Dyer and I had other than the ones I have already related. The check shown me has my signature on the back.

Check introduced in evidence and marked "Plaintiff's Exhibit 44."

(Testimony of L. E. Doan.)

Plaintiff's Exhibit No. 44.

(CHECK.)

"Fort Worth, Texas, Mar. 15, 1919, No. 17.

THE FIRST NATIONAL BANK 37-1 of FORT
WORTH.

Pay to L. E. Doan or order \$750.00, seven hundred
fifty and no/100 Dollars.

B. T. DYER.

(Endorsed: "L. E. Doan.") [172]

I looked upon the Lamb tract favorably and spoke favorably of it when Titus was there. I was a little doubtful about it, but I was confident that the well adjoining had not been thoroughly tested. I changed my mind a little later. I sold it to a man named Carter, a friend of Titus, who I think resides in Washington. That was along in June, 1920. The sale was not for income tax purposes. We had decided to charge the matter off entirely. The land had become absolutely valueless, and we concluded to sell it for whatever we could get for it, and we sold it for \$50. I testified in April, 1920, that I held that land in trust for the Doan Oil Company. I sold it a couple of months after that. The sale was at my suggestion. I took it up with Titus and we decided that the land was absolutely valueless and it would be advisable to charge it off before the end of the year. I made an assignment of the lease, which I acknowledged

(Testimony of L. E. Doan.)

at Shreveport. A resolution was passed by the Doan Oil Company authorizing the sale.

With reference to the Lamb tract, I told Mr. Dyer to go up to Wichita Falls and make a very careful examination of the situation and find out if there was any reason why we should not purchase the property; if there was any dry wells, or salt water wells, or anything that would militate against the value of the property, and that if he found it, all right, I left it entirely to him to go and make a thorough investigation—if he found it all right to let me know by telephone the next day, and I would arrange to draw on me for the money. He telephoned the next day and was very enthusiastic. I was also enthusiastic. It is my recollection that he went up there with Couch, and then Mr. Couch wanted to go in with us on this five-acre piece, if he approved of it. Mr. Couch, it is my understanding, it is my recollection that Mr. Couch wanted to go in on the Burke-Burnett field with me, and we had all been up [173] there, he and I, looking over other properties, and it is my recollection he went up with Mr. Dyer, with the idea of purchasing a half interest in the property. As to my saying that Couch had told Dyer about the dry holes before the Lamb purchase was made, I may be wrong about it and I am inclined to think that the conversation that I had with Mr. Couch was that he went up there with Dyer, and that during the day they were separated, and Mr. Dyer had phoned to me that the proposition was all right

(Testimony of L. E. Doan.)

and that Dyer had purchased it before he had an opportunity of talking the matter over, but that he, Couch, had found out about a well that was drilled about a quarter of a mile south that was a water well, a salt water well, and that he was a little bit afraid that that salt water condition might extend up as far as this property. I remember the conversation I had over the phone with Dyer. Dyer said that he had made a thorough investigation of the proposition, and he did not see any reason in the world why this piece of property was not absolutely all right. Dyer immediately drew on me for \$10,000 and after that I went to Wichita Falls, about some two weeks later I went out several times to the Lamb tract to look at it. I might have gone out with Leach. I went out with Dyer and my son; possibly Leach was along. At that time Couch had told me about the well within a quarter of a mile in salt water. I then put up the \$30,000, but I hesitated to put it up, because I was afraid that these fellows were not telling us the truth, but as near as I could tell, after talking to Mr. Dyer, and after talking to everybody, I concluded that possibly they were telling the truth. I already had \$10,000 in it, and I figured that we might be able to sell it within a few days, or a week or two, and make a profit on it, because at that time there were many transactions; [174] property was selling in the same block for \$10,000 and \$12,000 an acre, and in adjoining blocks \$13,000 an acre, and \$20,000 an acre; so I figured that it was—while I hesitated a little bit I figured it was

(Testimony of L. E. Doan.)

best for me to finish the payment at that time, and I did. When I paid the \$30,000 I was a little skeptical about it. They had been stalling along there apparently for some little time, and I could not understand why they had not made more headway. I knew they were stalling because they were practically in the same condition when I made the second payment as when Dyer made the first payment. They claimed they had a fishing job there and it kept them from going ahead. As to what I said about my files not having reached me I meant to say this, that these files never reached me, that these files were left in the office there, and Mr. Dyer closed the office up and got rid of them. Where they went to, I don't know, but they never reached me. A package reached me that was shipped from the office. I packed a box of books when I left and I instructed the janitor to ship it to me and they arrived in Fort Worth, that was in the summer of 1919. I asked Dyer to send the balance of the stuff that was left in the safe. Dyer told me he closed the office and that he had packed the boxes of my stuff and sent it down to the warehouse. He told me that at Fort Worth. I told him it was all right to keep it until I wanted it, and then I wrote him sometime afterwards to please have those files sent me, and he wrote me that he could not find them, that he had looked since I sent word—I wired him to rush the matter if he possibly could, because I wanted to use them, but I never have seen them. My recollection is

(Testimony of L. E. Doan.)

that the Stevens County deal was made when I was in California. I am quite sure that Dyer telegraphed me from Fort Worth and that the deal was made in February. He wanted my approval [175] of the proposition, which I wired, because it involved the payment of in the neighborhood of \$20,000. Dyer put up the \$1,250 and I refunded half of it immediately upon my return to Fort Worth. That was all the money that was put up. The turn was made and Couch purchased the property before the next payment had to be made. I recognize the papers shown me; one is the contract of purchase of the five-acre Burke-Burnett tract, dated May 5, 1919, and the other is a legal opinion as to title.

The papers introduced as Plaintiff's Exhibits 45 and 46, respectively.

Plaintiff's Exhibit 45 is, briefly, a contract of purchase by Doan from W. J. Wallin of a five-acre oil and gas lease in Wichita County, Texas; the purchase price, \$40,000, of which \$10,000 is placed in escrow as cash payment. Assignment of lease also placed in escrow; if title approved, assignment to be delivered to Doan and he allowed fifteen days for final payment.

Plaintiff's Exhibit 46 states condition of title.

There was some conversation with Dyer about issuing the Burke-Burnett check for \$10,000. It occurred at Fort Worth, before he went up there. Dyer asked me to arrange the matter so that he could draw a check for himself for the purchase

(Testimony of L. E. Doan.)

of that property. The arrangement was made at Fort Worth. Dyer said that he wanted his credit established so as to boost him. He was dealing with other people up there through the banks. Dyer stated to me that he did not have sufficient money and asked me to arrange this matter for him. I first went to Louisiana in April, 1919. Dyer did not go with me. I went alone. I had lots of conversation with Dyer on the proposition of my permitting him to go there. The reason I went there was that I heard there was a new strike in the Bull Bayou district. I met Greer, who owned [176] property there and I went to look at it. I am not quite clear whether Dyer was in Texas or in California at that time. Just about that time I had told Dyer that he would have nothing to do with the Louisiana propositions under any consideration; that I was going to handle that matter myself absolutely. I never asked Dyer to go to Louisiana on business. I may have invited him over there. We were very intimate. I might have asked him over there a dozen times. I don't think I ever asked him to go over and examine that field. I never at any subsequent time asked him to go over and examine any propositions of mine. I never had Dyer in contemplation in any deal I made in Louisiana.

I took over the Giffen well. I think Titus was there at the time. It was about ten days, or a few days before or after I took over the Clark and Greer place.

(Testimony of L. E. Doan.)

The Wehr and Haywood Syndicate was a proposition of one Haywood who asked me to put in \$1000, and I did. He drilled a well, but it was a failure. The property was somewhat south of Fort Worth. That was about May or June. Dyer knew about it. The conversation in May, 1919, with Dyer about Louisiana, wherein I said that my Louisiana operation would be on an entirely different basis was the conversation that I had in the morning that Lucey and Carr and myself returned from Fort Worth after Lucey talked to Dyer. I told Dyer that if he would get his money from his California Syndicate, or if he would take 10,000 shares of stock in the North Texas Supply Company, and pay for it, and if he would organize these drilling companies, and the North Texas Supply Company, and stay in Wichita Falls, and make that his headquarters, and run that business, and devote his whole time to that business, that I would carry him for an interest in [177] Louisiana, provided he done those things. It was entirely contingent on his doing these things—entirely contingent on his doing those things. At that conversation only Dyer and myself were present. Lucey was there and I asked him to retire and I would talk the matter over with Dyer. Dyer had objected to going into the supply business; he said he was an oil man. I said I would talk to Dyer and maybe I could persuade him to go in there. I told him that I was going to Louisiana and that I was not going to take him there and that he would have nothing

(Testimony of L. E. Doan.)

to do with the Louisiana operation. I did tell him that I would carry him for an interest in Louisiana if he would go to Wichita Falls and organize the North Texas Supply Company and become the President of it and stay there and manage it and if he would also in addition thereto organize two drilling contract companies, and also, organize another company, and also, organize the San Francisco crowd. What I told him was, "I will not take you into the Louisiana operations with me," or words to that effect. I told him I would not take him down to Louisiana. I would not let him go in with me in my operations down there, that I was going to handle that proposition myself alone and that I did not want him down there. I do know this, that I told Mr. Dyer that it was time that he settled down into a business and became a fixture somewhere, that he was 45 years of age, or thereabouts, and had a family to look after, and that Wichita Falls offered him the greatest opportunity he ever had in his life if he would go over there and take advantage of the offer that was made by Captain Lucey, on the one hand, and myself on the other, and that if he would go there and stay there and anchor himself there, instead of traveling all over the country on every pretext, as he had been in the past, that he had an opportunity [178] there to make a fortune for his family. Those are the words that I used to Mr. Dyer. As to the capitalization of the Company, Lucey had explained that to him in the morning

(Testimony of L. E. Doan.)

also and we both talked to him about his family and about his duty to go there and anchor himself and quit his rainbow chasing. Dyer was a good man in a boom town, in a speculative business, but as to the selection of oil properties, where it required the investment of a large amount of money, he was not there, he was too visionary, too quick on the trigger, and you could not depend on him.

I preferred to invest my own money in my own way myself. The North Texas Supply Company was to be capitalized for \$100,000. That was told to Dyer. It was agreed that he was to have bonus stock. I was not to share in the bonus stock. Lucey made the proposition to Dyer as to bonus stock. He agreed to give 10,000 shares. He did not agree to carry Dyer for 10,000 shares. Lucey said that if Dyer found it inconvenient to take the 10,000 shares that he subscribed for that he would arrange to carry it for him. He said that at that time. Carr, Lucey, my son and myself and Dyer were present. That was in addition to the bonus stock. I think I had about \$40,000 from Titus before the Lamb purchase. May be it was only \$20,000, but I think \$40,000. Captain Lucey told Mr. Dyer that he considered Wichita Falls the greatest opportunity, the finest place ever to establish a supply company, and for oil operations, that there was in the United States at that time, and that unquestionably if Mr. Dyer would accept this position and go up there and give his whole time to it, not only to the North Texas Supply Company, but to

(Testimony of L. E. Doan.)

drilling companies, and to a rig-building company, and if he had any spare time he could devote it to the oil business on the side [179] in Wichita Falls, that he could unquestionably make a lot of money there. Captain Lucey urged him to go for that reason. Lucey at that time was the head of the Lucey Manufacturing Company. They had no establishment at Wichita Falls and wanted to put one in there. Lucey did not tell me that the Lucey people were under contract not to do business in Wichita Falls. He did say they were not in a position to do business under the name of the Lucey Manufacturing Company and for that reason he wanted to establish a subsidiary there. That would be the North Texas Supply Company. I put in \$5,000 in the North Texas Supply Company for my son. I put in no other money. Captain Lucey was in Shreveport shortly after that. On the 30th of June Lucey, Titus and myself were in Shreveport. That was when we organized the Doan Oil Company. We put up money to arrange the finances of the Doan Oil Company at that time. I endorsed Lucey's note at the bank of Shreveport for \$25,000. I know that Dyer neglected the North Texas Supply Company by going to California. I got that from a good many sources. After the organization of the North Texas Supply Company I was not at Wichita Falls frequently. Since that time I have been there two or three times and never stayed more than one day. I don't know what Dyer came to California for on his first trip after the

(Testimony of L. E. Doan.)

30th of May, 1919. Dyer was at Shreveport a number of times. I did not protest his going over there. I was always glad to see him. I invited Dyer to Louisiana. The San Francisco crowd that Dyer was to organize was a syndicate that Mr. Dyer had told me that he had about \$50,000 subscribed for an oil company which he could call in at any time; in fact, he showed me one or two or a few of the letters, I didn't go through them all, but he assured me he had \$50,000 he could call in at [180] any time into an oil company, at any time that he would send for it. Mr. Everett, I think, was one of them, and I think Mr. Fleischacker was in it, and I think some of the old Alaska Commercial crowd—I don't know what their names are. That \$50,000 was to be put into an oil operation upon land to be selected by Dyer. As to my sharing in the operation, there was no agreement on that. Nothing was said about it at that time and nothing later that I know of, except that I expected Mr. Dyer to go through on all those things if I carried him for an interest at Shreveport, but there was never any statement made on that proposition. It was just an expectation on my part. Dyer was going to be carried by the San Francisco crowd for a quarter interest, as I understand. He told me that. I had an expectation of sharing in that quarter. Yes, that was to be an operation on oil lands selected by Dyer.

I don't know where the tract in Oklahoma is that Dyer wanted to borrow money on this year.

(Testimony of L. E. Doan.)

It was such an absurd proposition that I did not pay any attention to it. The idea of his going to borrow money—for me to borrow money on stock he never had paid for, or owned; why it was perfectly ridiculous. I absolutely told him that I would not think about it for a minute, under the circumstances, because he had absolutely failed to carry out any part of his arrangement. I told him that he had absolutely failed in every respect. He had not organized his oil company, he had not organized his drilling companies, he had not taken his stock in the North Texas Supply Company, he had not done one thing that he agreed to do, not one thing. In May, 1919, I told Dyer that from then on we would have to operate on a different basis. Theretofore, Mr. Dyer had been working with me right along for some time. [181] He would go out and purchase a piece of property, or find a piece of property, and if it looked good to me I would put up the money and purchase it, and I was the boss of that property and the owner of that property; Mr. Dyer never owned a piece of property I ever purchased, although one stood in his name.

Letter identified by witness, introduced in evidence as Plaintiff's Exhibit No. 47.

Plaintiff's Exhibit No. 47.

"B. T. Dyer,
Balboa Building,
San Francisco, Cal.

February 15, 1919.

My dear Tom:

Rec'd your wire of 14th to-day, too late to get in touch with Shoup. Will see him Monday. Glad you got the Bosque lease matter fixed up.

I will not be able to reach Fort Worth much before the 1st of March, but will not be later than that date. Have got to make out my 1918 Income Tax statements and want to close up the Santa Maria transaction before I leave. Woods & Housen promise sure to have everything cleaned up 1st of next week. McLain is working on books and I should have everything completed by end of next week. Will not wait for Emery. Just rec'd a wire from him that he would not leave there for three weeks yet, probably longer, so I will see him then. I wish you would phone him Camp Supply Office—See if there is anything you can do for him, and if he thinks you can help him I wish you would run up there.

Don't you think it would be a good idea for you to go to Houston and Shreveport before I arrive—get things lined up in those fields. Even if Horn (?) & Lucey don't come through, I can depend on Titus, and will want to look all the field over and pick something good. We cannot hurry and we will not lose anything by waiting. There is sure to be

a slump there this summer. The price of oil has already dropped and it will drop more, so there will be plenty of opportunity and many leases for sale. Titus is not worrying about the drop in price of oil. I have predicted all along that there would be a slump. And it will give the bona fide operators a better chance. The price will come back soon as they get pipe lines.

I see by the papers that you are having a storm. I don't suppose we could get around much, on account of weather and bad roads.

With all the different leases we can work when we get started there will be plenty for us to do and we will make good.

I will get hold of Schoup first thing Monday morning. [182]

Everything here is quiet, except that it looks like Oakland would have a general strike and they are talking strike everywhere. I hope Emery will get his discharge soon or he may be detained indefinitely.

With regards to Pyron and all friends,

Sincerely,

DOAN.

Am using your paper because mine is all gone."

Check introduced and marked, Plaintiff's Exhibit 48.

(Testimony of ^{1st} L. E. Doan.)

Plaintiff's Exhibit No. 48.

(CHECK.)

“Fort Worth, Texas, May 19, 1919. No. —.

**THE FIRST NATIONAL BANK 37-1 OF FORT
WORTH.**

Pay to Cashier's Check or order \$10000, Ten
Thousand & 00/100 Dollars.

L. E. DOAN.”

That check was part of the \$30,000 payment on the Lamb tract. The rest of the \$40,000 was paid by another cashier's check for \$20,000. It was paid at the same time. The first payment at Shreveport I think was the 10th of April.

Document introduced and marked Plaintiff's Exhibit 49.

This exhibit is an acknowledgment before a notary public of J. B. Greer declaring that he grants, conveys and delivers, with full guarantee of title, unto L. E. Doan, his title to certain oil lands in Red Parish, Louisiana, being a portion of that certain lease from J. C. Pugh to Greer, for the consideration of \$8,000 cash. Acknowledgment dated the 21st day of April, 1919. The consideration was \$8,000, first payment made, I think, April 10th, and balance on the 21st.

Check introduced and marked Plaintiff's Exhibit No. 50.

(Testimony of L. E. Doan.)

Plaintiff's Exhibit No. 50.

(CHECK.)

"Fort Worth, Texas, April 10, 1919. No. —.
[183]

**THE FIRST NATIONAL BANK 37-1 OF
FORT WORTH.**

Clark & Greer Drilling Co., or order, \$1000.00 One
Thousand & no/100 Dollars.

L. E. DOAN.

(Endorsed: "Pay to the order of City Savings Bank & Trust Co., Shreveport, La. Clark & Greer Drilling Co." "Pay to the order of any bank or banker. Prior endorsements guaranteed. April 14, 1919. Federal Reserve Bank of Dallas. 32-3." "Received Credit Through District Clearing House at Federal Reserve Bank of Dallas. Sent Apr. 12, 1910. All Prior Endorsements Guaranteed. First National Bank, Shreveport, La. 84-2." "Pay to the order of any bank, banker or trust company. City Savings Bank & Trust Co. April 11, 1919. The First National Bank, Shreveport, La.")

I think that was the first check. I believe the Giffen property was taken over later. This Greer property went to the Doan Oil Company, also the Lamb tract and the Oklahoma lease. The Doan Oil Company took it over at the same price that we paid for it. Dyer was not interested in any tract that I purchased. Had we made a profit on the Lamb tract I would have considered Dyer entitled

(Testimony of L. E. Doan.)

to a profit in it because he did a lot of work on the purchase of the lands, in negotiating it. As to the Oklahoma tract, I considered him entitled to a profit. I presume I so stated to him at the time. I don't remember any specific conversation.

The North Texas Supply Company was organized for \$100,000, and \$50,000 paid in. I was a director. I did not see all the reports to the Company. I don't think I ever saw the audit when Dyer left the company. I don't know that there was never over [184] \$42,000 paid into the Company. I was never told that. The Lucey Company furnished practically unlimited credit for the Company. I have no recollection of my son writing to me and advising me that he was writing to Lucey requesting payment of the capital into the North Texas Supply Company, or anything of that kind. I was advised that the Houston office was asking and requiring acceptances from the North Texas Supply Company for their goods. I did not write to Dyer that he should not give acceptances to the Lucey Company. I told Mr. Dyer not to give trade acceptances, except where orders have been filled and the money was due; that was the situation. The North Texas Supply Company probably owed the Lucey Company at all stages of the game \$100,000 or more, and it was falling due from time to time, and Mr. Dyer wrote me that the Lucey Company were insisting on trade acceptances on deals that were not due. That is what that refers to. I received a letter from Captain Lucey in

(Testimony of L. E. Doan.)

which he stated that the volume of business transacted was really more than what he should have done with his capital. I stated to Dyer on many occasions that he had neglected to serve me faithfully; that he did not organize two drilling companies; that he did not organize a rig-building company and that he traveled around, and that he had not taken and paid for the stock that he had subscribed for. I stated those things to Dyer at Fort Worth on January 21, 1920. I fix that date because Dyer gave me a check for \$3,000 in payment on the indebtedness that he owed me from the time that he left California. The check was paid, yes; I entered the memorandum in my book at the time that it was paid to me. That conversation was at Fort Worth. I made the entry in my book of the receipt of the check on that date; that is what I have to go by; that was with reference to the Santa Maria well. It was money that I had advanced for Dyer [185] on the Santa Maria well, a California proposition. He had never requested from me an opportunity to pay it before, or a statement from me, so that he could pay it. I demanded the money from him, but he had not offered it. At that time Dyer told me that he would pay the balance of the money, that he would send the rest of the money the next day, the following day; he said, "I have the money, and I will pay it the next day." He said, "I have already charged that \$6000 off in my income tax this year, this past year, and I will send you the money next

(Testimony of L. E. Doan.)

day, because I have already made up my mind to send it to you, because I have already charged it off."

I sent the telegram shown me.

(Telegram marked Plaintiff's Exhibit 51.)

Plaintiff's Exhibit No. 51.

(WESTERN UNION TELEGRAM.)

Ft. Worth Tex 156 PM May 5 1919.

B T. Dyer

Care American Hotel

Wichita Falls, Tex.

Close for Lamb piece if no objections the seven and half offered was southeast I would take that also Do not lose Lamb piece unless you have something better.

L. E. DOAN. 2 PM."

I also sent this telegram.

Document marked Plaintiff's Exhibit 52.

Plaintiff's Exhibit No. 52.

(WESTERN UNION TELEGRAM.)

"Ft Worth Tex 421 PM May 6 1919.

B T. Dyer

American Hotel

Wichita Falls, Tex.

Look up production for Terry Be sure identify party as [186] real owner our purchase.

L. E. DOAN. 431 PM."

(Testimony of L. E. Doan.)

The Terry referred to is Joe Terry. We referred to the Lamb tract. I also sent the following telegram:

Telegram marked Plaintiff's Exhibit 53.

Plaintiff's Exhibit No. 53.

(POSTAL TELEGRAM.)

P Shreveport La 1050 am May 15 1919.

B T. Dyer

c/o Ft Worth Club

Ft Worth Texas

Better go Burke tonight sell both pieces soon as possible also eastland acreage Can use money here better advantage Things looking fine Keep me fully posted by wire

L. E. DOAN 1141 am."

I also sent the following telegram:

Telegram marked Plaintiff's Exhibit 54, 1919, May 17 A. M. 441.

Plaintiff's Exhibit No. 54.

(WESTERN UNION TELEGRAM.)

"Shreveport La 16

B T. Dyer

Care Wigwam Tent Hotel

Wichita Falls, Tex.

Use your best judgment but sell Whatever you do will be satisfactory Also sell Burke piece We have goutht several pieces Will tell you details later this week Like best place to do business

(Testimony of L. E. Doan.)

Keep me posted Titus and I remain here until Sunday.

L. E. DOAN."

That applies to all the pieces of Burke-Burnett. The following, "Like best place to do business," means, I think, "Like Shreveport."

That telegram was sent by me to Dyer. It was sent before I told Dyer at Fort Worth that he would not be permitted to go into Louisiana. That conversation occurred at the time the North Texas was organized, which was almost the last day of May.

Telegram offered and marked Plaintiff's Exhibit 55.

Plaintiff's Exhibit No. 55.

(WESTERN UNION TELEGRAM.)

"Shreveport La 17

"919 May 18 AM 1 28.

B T. Dyer

Wigwam Tent Hotel

Wichita Falls, Tex. [187]

Better remain and make sale first opportunity We have made bit purchases here wonderful properties and need the money Wire me tomorrow before noon exact condition of neighbors well also prospect of sale I go Ft Worth tomorrow night Titus goes to Washington

L. E. DOAN."

(Testimony of L. E. Doan.)

The first sentence of that telegram applies to the Burke-Burnett property.

I sent a telegram to Dyer dated June 11, 1919. That was after the conversation at Fort Worth about the North Texas.

Telegram offered marked Plaintiff's Exhibit 56.

Plaintiff's Exhibit No. 56.

(WESTERN UNION TELEGRAM.)

"1919 Jun 11 AM 4 51

San Francisco Calif 10

B T. Dyer

Room Twenty Three North Western Railroad
Bldg Wichita Falls Tex.

Am leaving Thursday arriving Ft Worth Sunday
Leaving for Shreveport Sunday night Have arranged everything satisfactory Glad to hear good news You and Emery keep up good work and we will all make fortune Your friends all pleased to hear of good news.

L. E. DOAN."

I don't know what the good news referred to there, but probably Dyer had wired me that he was making progress with the North Texas, something like that. I don't remember Dyer having wired me that the Giffen well had landed at Shreveport.

The following telegram introduced and marked Plaintiff's Exhibit 57. [188]

(Testimony of L. E. Doan.)

Plaintiff's Exhibit No. 57.

(WESTERN UNION TELEGRAM.)

MK Los Angeles Calif 1148 PM June 16 1919
North Texas Sup Co
Wichita Falls Tex

Have wired Carr today that unless he is prepared to make immediately deliveries to you I will not ask you to proceed with the completion of your organization Carr wanted this field covered and now that you are prepared to do so he must deliver you supplies even though he has to neglect his own stores.

J F LUCEY 849 P."

I don't remember that telegram; it was never sent to me that I know of.

Telegram introduced and marked Plaintiff's Exhibit 58.

Plaintiff's Exhibit No. 58.

(WESTERN UNION TELEGRAM.)

Shreveport La 1226 P Jun 17 1919
B T Dyer
Ft Worth Club
Ft Worth Texas

Giffen well completed Looks fine Hundred barrels Everything in all fields looks encouraging Will arrive Ft Worth Thursday

L E DOAN 138P."

(Testimony of L. E. Doan.)

That was after the conversation at Fort Worth.
“Q. That was after you had told Mr. Dyer that he would not be allowed nor permitted to go to Louisiana?” “A. Yes, I had told Mr. Dyer, if you will permit me, that I would carry him for an interest in Shreveport, provided he would carry out his contract in North Texas prior to this time.”

Telegram introduced and marked Plaintiff's Exhibit 59.

Plaintiff's Exhibit No. 59.

(WESTERN UNION TELEGRAM.)

“1919 Jun 21 PM 7 05

Houston Tex 5 P WQ [189]

B T Dyer

Wichita Tex Supply Co

Wichita Falls Tex.

Lucey arrives tonight Everything working out alright You will have everything within reach Going to Shreveport from here Monday to meet Titus Wire if you want anything

L E DOAN.”

Telegram introduced and marked Plaintiff's Exhibit 60.

Plaintiff's Exhibit No. 60.

(WESTERN UNION TELEGRAM.)

“Houston Tex 1144A 22 1919, June 22 P. M.

12:06

B T Dyer

Care North Tex Supply Co

Wichita Falls Tex

(Testimony of L. E. Doan.)

Have not been advised about well Have wired Raymond Will wire you soon as I hear Lucey here and everything is positively arranged about your material.

L E DOAN, Rice Hotel."

Raymond was a geologist residing in Shreveport. I cannot exactly recall what the telegram refers to.

Telegram introduced and marked Plaintiff's Exhibit 61.

Plaintiff's Exhibit No. 61.

(WESTERN UNION TELEGRAM.)

"Shreveport La 1038A June 24 1919

B T Dyer

Lucey Mfg Corpn Ranger

That well came in big gasser No oil yet Dont look good I wrote you fully to Wichita Falls Will be here several days Wire about Five acre deal and eastland when you return

L E DOAN 1123A." [190]

I don't know what well I referred to in that telegram. It could not have been any well that we had. As to the five-acre deal referred to, that was the Lamb tract.

Telegram introduced and marked Plaintiff's Exhibit 62.

(Testimony of L. E. Doan.)

Plaintiff's Exhibit No. 62.

(WESTERN UNION TELEGRAM.)

"Shreveport La 444 P June 25 1919.

B T Dyer

Ft Worth Club

Ft Worth Tex

Am offered on cars complete rotary outfit including engine and boiler grieve stem and fittings for ten thousand dollars Childs examined and says it is first class condition Wire or phone tonight if you can handle Titus Have bought eighty acres good stuff Forward my mail tonight.

L E DOAN 758 P."

That telegram means that Titus and I bought eighty acres down there at Shreveport.

Telegram marked Exhibit No. 63 introduced.

Plaintiff's Exhibit No. 63.

(WESTERN UNION TELEGRAM.)

"1919 Jul 7 AM 12 14

Shreveport La 6

B T Dyer

1014 Balboa Bldg

San Francisco Calif

(bbls) (had)

Giffin well pumping over hundred bones Hard cash offer twenty-five thousand for Bull Bayou forty We are putting up rig there Now also drilling second well on Giffin lease in morning My

(Testimony of L. E. Doan.)

desk take care all papers in drawers Everything fine here Regards Mrs Dyer.

L E DOAN." [191]

Telegram introduced and marked Plaintiff's Exhibit 64.

Plaintiff's Exhibit No. 64.

(WESTERN UNION TELEGRAM.)

"Jul 14 AM 3 10

Forth Worth Tex July 13

B T Dyer

1014 Balboa Bldg

San Francisco Calif

Simms did not show up Will be here tomorrow but I do not expect him to pay Stop Send my papers to Shreveport by express Stop Cannot verify report of well across river Stop Have instructed Leach to sell Stop Will instruct Daniels to sell Will drive car Shreveport tomorrow need it there Stop Martin Postal Building find out about Terry deal and wire me Emery here says everything fine at Wichita

L E DOAN."

The reference to Simms in that telegram means that we had a prospective deal for the sale of the five-acre piece to a man Simms and I had a date with him at Fort Worth and he did not show up. The reference to sending my papers to Shreveport by express refers to my office papers in San Francisco. The instructions to Leach refer to 80 acres

(Testimony of L. E. Doan.)
in Oklahoma. The car referred to was the automobile that Dyer and I purchased in Fort Worth. The Terry deal refers to the Considine-Martin Syndicate.

Telegram introduced and marked Plaintiff's Exhibit 65.

Plaintiff's Exhibit No. 65.

(WESTERN UNION TELEGRAM.)

“1919 Jul 8 PM 7 01

Shreveport La 18

B T Dyer

Palace Hotel

San Francisco Calif

Clark and Greer well on adjoining forty Bull Bayou flowing over thousand barrels from top of sand our ten inch casing cemented [192] today Stop Wire me all about Terry and Martin deal Are they going to put it over Stop Everything going fine here

L E DOAN.”

The Clark and Greer well is the 40-acre tract that I purchased in Louisiana and upon which I made the first payment April 10, 1919. The Terry Martin deal refers to the Considine Martin Syndicate.

Telegram introduced and marked Plaintiff's Exhibit 66.

(Testimony of L. E. Doan.)

Plaintiff's Exhibit No. 66.

(WESTERN UNION TELEGRAM.)

“1919 Jul 18 AM 3 16

Shreveport La 17

B T Dyer

Palace Hotel

San Francisco Calif

Carr not sore but says you are mistaken and wants you to go direct to Houston Stop Go St Francis Importation go get number of quarts and dates of each shipment to me They have shipped me less than half my order but have failed to send bills and express receipts They claim to have shipped all Stop Only two shipments of yours arrived Make them show items and dates of each shipment and if they cannot make good make them refund Drilling at Bull Bayou Big well just in near South East corner Pine Island Lease which absolutely proves all of it *Hop* Sims has not paid Claims he will but I have not faith Sorry to hear you are not well Come soon as possible The boys need you Going Houston tomorrow night return Monday

L. E. DOAN.”

I sent that telegram. The telegram should not read “*Hope* Sims has not paid” but should read “Stop Sims has not paid.” [193]

Telegram introduced and marked Plaintiff's Exhibit 67.

Plaintiff's Exhibit No. 67.

(WESTERN UNION TELEGRAM.)

"1919 Jul 28 A M 5 01

Shreveport La 27

B T Dyer

Cr Ft Worth Club

Ft Worth Tex

Be careful about talking to Martin about Terry deal See Terry and if you can help him raise any money do it The deal is closed but it is up to Terry and our end to raise more money otherwise Martin will have it all Stop Also see Sims and let me know about progress I will be here balance of week Everything going fine

L. E. DOAN."

Perry was the party interested in the Considine Martin deal.

Telegram introduced and marked Plaintiff's Exhibit 68.

Plaintiff's Exhibit No. 68.

(WESTERN UNION TELEGRAM.)

"1919 Aug 12 AM 1 41

Shreveport La 11

B T Dyer

Ft Worth Club

Ft Worth Tex

Have made arrangements to leave here tomorrow night Going to Southern Louisiana to look

over some leases Better postpone your trip to end of week so I can show you around Be sure and meet Sims Friday If he means business he will come through with a payment If you think advisable tell him to pay half cash and half out of oil That will make it easier for him Don't spring this however unless you think it necessary Better get in touch with him Thursday and ask him if he wants me there

L. E. DOAN."

[194]

Telegram introduced and marked Plaintiff's Exhibit 69.

Plaintiff's Exhibit No. 69.

(WESTERN UNION TELEGRAM.)

"1919 Aug 29 AM 11 32

Shreveport La 1054 A 29

B T Dyer

North Texas Sup Co

Wichita Falls Tex

McDevitt says our forty in Oklahoma is sure to come in Better stop sale at a low price until we have time to investigate Wish you would see Sims and have it out with him one way or the other Under all the circumstances do not think you should ask for check on your expense account If you need money better get it from your bank Wire me about Sims as I will need the money here for development work

L. E. DOAN."

(Testimony of L. E. Doan.)

The expense account referred to means some little expense that Dyer had been to and he asked me to pay him the cash and I told him he had better wait a little while. I told him to turn in a bill against the Doan Oil Company for the expense that he had incurred in regard to the acquiring of the Oklahoma property and the Burke-Burnett property.

Telegram introduced and marked Plaintiff's Exhibit 70.

Plaintiff's Exhibit No. 70.

(WESTERN UNION TELEGRAM.)

Shreveport La 1032 A Sept 22 19

B T Dyer

Care Ft Worth Club

Ft Worth Tex

Well will be drilled in tomorrow but heavy rains make it impossible to go Would like for you to come anyway Answer

L. E. DOAN."

Telegram introduced as follows: [195]

Plaintiff's Exhibit No. 71.

(WESTERN UNION TELEGRAM.)

"1919 Oct 7 AM 1 09

Shreveport La 6.

B T Dyer

Penna Hotel New York NY

Well has dropped to five hundred Barrels
Wired you care Lucey Did not way twenty three

pounds pipe if Pittsburg was going to ship other order

L. E. DOAN."

Plaintiff's Exhibit No. 72.

(WESTERN UNION TELEGRAM.)

Received at Ph Pennsylvania Hotel

"Shreveport La Oct 7 1919 1004 AM

B T Dyer

Penn Hotel Nyk

Pyrone insists on immediate drilling on Stephens county lease Better get in touch with him immediately

L. E. DOAN 1129 A."

Plaintiff's Exhibit No. 73.

(WESTERN UNION TELEGRAM.)

"Shreveport La Oct 11 1919

B J Dyer

Ft Worth Club

Ft Worth Tex

Better get me on phone or write fully about what you have in mind Stop No chance to do anything here Stop Better get your California organization together and put them in Pyron lease or something Stop Big well down to two hundred fifty barrels Stop Will take drill stem out next week and see if can bring it back Stop So much rain here that it is impossible to get anywhere or do anything

L. G. DOAN 810 P." [196]

Plaintiff's Exhibit No. 74.

(WESTERN UNION TELEGRAM.)

"1919 Dec 17 AM 4 32

Shreveport La Dec 16

B T Dyer

Penna Hotel New York NY

Tested number one Nelson well twenty seven hundred fifty six feet Plenty oil but not sufficient gas to flow Am drilling deeper Stop Number two pugh flowing three hundred barrels Other-wise nothing new

L. E. DOAN."

Letter introduced as Plaintiff's Exhibit 75.

Plaintiff's Exhibit No. 75.

(Letterhead B. T. DYER.)

"Feby. 10, 1919.

My dear Tom:

Am enclosing some letters. I took the liberty of opening two—from Canada. It seems that we are likely to receive some more payments a/c 7 Kora.

I hope to leave here next week. Expect Emery home this week, and will get everything cleaned up so I can go.

Titus will be here tomorrow, and I will have a further talk with him. I think he is the only one we can really count on, unless Lucey and Hover is ready to go.

Clarence Berry has been out of the City ever

since you left. I haven't any idea that he would go anyway.

I guess we will have to go to the bat ourselves, and when we find something good tie it up. I am sure Titus will finance anything after we get it and can say it is good.

When I get back we will get a machine and when we find something good, we will tie it up and then we can finance it. It may [197] take us a little longer and we will have to be a little more careful, but we will make more out of it. All these people out here think we are asking too much, so we will have to get it in a different way.

Find out about our leases, and close the deal—let me know about it.

I gave a letter of introduction to a Mr. J. C. Eskstrand to you. He represents the S. F. Chronicle and is going to Texas to write up the field. He told me today that he was in Dremble's office here a couple of days ago, and they told him that the boom in Texas was quieting down. Said that Dremble had so reported I hope he puts our deal over.

If Titus is still anxious to form a company I will try to get some others in, but if he is not anxious I will drop the matter until we have something lined up. The big strike in Seattle and Oakland have scared everybody. It looks like the Unions are getting ready to tie up everything in the U. S. The bankers here are all scared, and the outlook is not good.

(Testimony of L. E. Doan.)

I hope you will find everything looking good. Why don't you go down to Houston & Shreveport and get a lineup there before I arrive so we will know where it is best for us to dip in.

I will surely be ready to leave here sometime next week.

Sincerely yours,

DOAN."

The Titus referred to is the same who was on the witness-stand. The letter was written from San Francisco and I presume it was sent to Fort Worth. Dumble was the geologist for the Southern Pacific Company and associated with Paul Shoup.

Letter introduced as Plaintiff's Exhibit 76.

[198]

Plaintiff's Exhibit No. 76.

(Letterhead DOAN OIL COMPANY.)

"Shreveport, La., September 1st, 1919.

Mr. B. T. Dyer,

c/o Ft. Worth Club,

Ft. Worth, Texas.

My dear Tom:

I think you have made a good buy in taking the eighty acres in Stephens County. When Mr. Delaney was here he said that you had asked him to go in on the proposition. I told him that I thought it a good deal. I received a wire from him this morning that he had confirmed Alcott's report about the Hill Well, and he advised tying property up. I wired him this morning to get in

touch with you so you will probably hear from him. I hope the Alcott matter will be closed up within a few days, as I will need my personal money shortly. We are drilling three wells now, will start another one next week, and possibly two wells. Before these wells are completed with all equipment, tanks, standard rigs, etc., they will require an outlay of nearly one hundred thousand dollars. After they are completed I hope we will have production enough to take care of our future development so that we will not be in need of any more money.

I made a sale today of fifteen hundred acres of our Bull Bayou Wildecat for twelve thousand five hundred dollars. The parties purchasing will drill and prove it up for us. This will leave us over a thousand acres in the clear.

The Bull Bayou Well is going rather slowly on account of the strong gas pressure. They promise, however, to set the six inch pipe sometime this week, and it will be a matter of two weeks after that before the well is completed.

In all your letters and telegrams you have stated that you [199] were about to see Mr. Sims, but you do not say that you have ever seen him, or that he is doing anything whatever to bring the deal to a close. Please let me know what he is going to do. I am about convinced that he is simply stalling and has no idea of fulfilling his obligations. Everything is going along as usual.

With kindest personal regards,

Sincerely,

L. E. DOAN."

(Testimony of L. E. Doan.)

That letter was written by me. The first paragraph refer to an eighty-acre piece that Dyer told me he was figuring on buying for his California people. I told him to go and investigate it and find out if an oil well had brought in and if so it would be a good thing for the California Company. The next thing I heard from Dyer was that he had bought this property. After that he found out it was a water well instead of an oil well and Dyer was able to get out of the contract, for which he was congratulating himself. That is what Dyer told me at the time.

Letter introduced and marked Plaintiff's Exhibit 77.

Plaintiff's Exhibit No. 77.

(Letterhead DOAN OIL COMPANY.)

“Shreveport, La., September 16th, 1919.

Mr. B. T. Dyer,

c/o Ft. Worth Club,

Ft. Worth Texas.

Dear Tom:

I think it would be a good idea for Mr. Delaney to come over here as soon as he can. You can tell him that the Southwestern Gas Company have eight or ten thousand acres southwest of Homer, which proposition. There are a number of wells about to come in near portions of this land, and if Mr. they will turn over to me on some kind of a Delaney were here on the ground he might [200] he might pick up something good for your company.

You can tell him that I will do everything I can to put him in right.

I received your check for your balance on the Eastland Deal and it is satisfactory.

Wish you would see Walter Pyron and ask him if there is any dope across the river from Burkburnett, I hear rumors every day that wells are coming in.

I wrote you yesterday, we are held up for a day or two in finishing our weel on account of freight congestion. Will let you know as soon as we get going.

With kindest regards to Mrs. Dyer.

Sincerely,

L. E. DOAN."

LED/K.

The first paragraph refers to Dyer's \$50,000 California Company.

Letter introduced and marked Plaintiff's Exhibit 78.

Plaintiff's Exhibit No. 78.

(Letterhead DOAN OIL COMPANY.)

"Shreveport, La., September 20th, 1919.

Mr. B. T. Dyer,

% Ft. Worth Club,

Ft. Worth, Texas.

My dear Tom:

Your wire of the 19th received. When Jimmie comes to Shreveport tell him to look me up imme-

diately not only in regard to contract but in regard to selling rigs here. If you can get your orders filled for rotaries which Mr. Carr assured me he would do you can sell all of your surplus rotaries here and if you like you can get a bonus of five or ten per cent. Carr told me that this would be all right.

It is raining here to-day, and if it keeps up, I don't know whether we will be able to see our #1 Pugh well brought in or not, [201] however, will be glad to have you come over on your way to Houston. Cannot promise you any fancy hotel accommodations. Shreveport is very fast approaching the condition of Wichita Falls. Hotels are jammed and the people have gone crazy. If Delaney is going in with you in your new organization now is the time for him to be on the ground here, because there will be some great opportunities. Let me know by wire when you are coming.

Sincerely,

L. D. DOAN."

LED/K.

That refers to the same company. Delaney was to be connected with the California Crowd.

Letter introduced and marked Plaintiff's Exhibit
79.

Plaintiff's Exhibit No. 79.

(Letterhead DOAN OIL COMPANY.)

Shreveport, La., Oct. 25th, 1919.

My dear Tom.

I rec'd yours of 23d. I fully appreciate the difficulty in getting leases around the new well near Iowa Park. You must first be absolutely sure that there is no break about it. I am sure however you will find something. And I would not tackle a wild cat. The Lufkin County is wild cat. Raymond does not know any thing about it.

I have written Titus about the American Oil & Engineering Co. and a little later on after our wells on Section 6 are completed I may take it up with them. But I don't want you under any circumstances to mention it until we are ready to talk business, because I will have to go over the matter fully with Titus before I can offer anything.

Regarding the cancellation of your order with Carr. The only thing I have to say is to stand pat. I am through with taking [202] any of his bull. I will go to the bat with him any time. And I suggest that you keep on selling rigs wherever you can Shreveport or any other place. They have violated every agreement with the North Texas Supply Co. and you are at liberty to do as you please.

Bull Bayou will be as bad as Burke in 60 days. They are bringing in 5000 and 10000 live wells every few days, and no way of handling the oil.

Emery wrote me that he expected to come over for

(Testimony of L. E. Doan.)

a week end, but I have not heard further from him. I would like him to come on for two or three days, as he has never been here.

I hope you will be able to find something for your California crowd, but I realize that it is no easy thing to do. You will find something, however, and can soon build up a big company.

Things are at white heat over here but mostly lease speculators. Very few new companies are being formed. Olcott is here, and kind of gets on my nerves, keeps after me all the time. I think he has made some sales.

A well has come in across the river near some of the wild cat acreage in Bull Bayou—better than 200 bbl. I may sell some for from 100 to 200.

Sincerely yours,

DOAN."

The American Oil & Engineering Company referred to in that letter is the same company for which Dyer was working. I did not know that he was working for them at that time. Mr. Dyer had told me that the American Oil & Engineering Company might possibly be in the market for property, and I told him that I would take the matter up with them in due time, but he did not tell me at that [203] time he was working for the American Oil & Engineering Company.

Letter introduced as Plaintiff's Exhibit 80.

Plaintiff's Exhibit No. 80.

(Letterhead DOAN OIL COMPANY.)

Shreveport, La., Oct. 27.

My dear Tom:

I am leaving Wednesday for Washington. Had a wire from Titus this morning to meet him and Captain Lucey, We will discuss income tax and decide on whether it will be advisable to sell everything. I will only remain in Washington a couple of days and return here. Will let you know soon as I return what we decide on. We cannot offer anything until the wells on the 80 are completed which will be after Nov. 15th.

Our No. 1 Pugh well is down to 100 bbl. Completely sanded I think. We have been unable to complete the stand and rig on account of rain and mud. It rained 12 inches here in 10 days and completely stopped all work. We expect however to have it completed and the tools out of the hole within a week. And I hope the production will come back. I don't expect over 500 bbl, as the gas seems to have died out completely all around that part of the field.

As I wrote you yesterday, do not make any overtures to anybody about a sale of the property until you hear from me, as it might interfere with Titus plans. I don't know what his ideas are, but I think I have convinced him that we should sell some of our properties.

Rec'd the copies of your letters to Carr & Young.

I don't suppose that they will have the nerve to try to hold you up. If they do tell them you will not stand for it. I am thoroughly disgusted with Carr, and if he makes any bad breaks, I will go straight to Lucey, and in such a way that he will take notice. [204]

I will be in Washington probably Friday & Saturday, and will return here immediately.

Sincerely yours,

DOAN."

That letter was written by me.

Copy of letter from Dyer to Doan introduced and marked Plaintiff's Exhibit 81.

Plaintiff's Exhibit No. 81.

"Oct. 1st, 1919.

"Mr. L. E. Doan,
Merchants Bldg.
Shreveport, La.

Dear Leonard:

The Pittsburgh office have arranged for five (5) carloads of 6" Drill Pipe for you—1 carload of which will start in Sept., and another carload each month thereafter.

Mr. Clarke and Mr. Hoover, and the Purchasing Department here are trying to get better deliveries on this at the present time. New orders that are given are not promised inside of six to nine months. So far to-day, we have been unable to find any pipe that can be delivered immediately. We are still hunting.

Mr. Hoover has just returned from New York and advises me strongly that I should take a couple of days to go there and see Mr. Meredith, as his plan was something that apparently is big, so I am going to leave for New York to-night, as I have received three telegrams here from Mr. Meredith, urging him to be there Thursday at a meeting.

I have had a splendid talk with Mr. Hoover and I am sure if there is any opportunity of getting things straightened out in Texas, he is going to insist on our deliveries. He is going to talk this up with Captain Lucey, personally.

While I was in Chattanooga, I arranged with the Southern [205] Engine & Boiler works to get 28 boilers, which will be delivered on a promise scattered over a period of three weeks, and they have reduced the price \$100.00 to meet me on my demand.

Taking everything into consideration, the best thing I can do is to accept these, as it will give us a rebate of \$100.00 per boiler, and get us immediate deliveries on the balance of our original order, and I am shipping four (4) carloads to Shreveport and three (3) to Wichita Falls. I feel that I made about \$28000.00 by coming to Tennessee, in addition to getting better deliveries.

I am just advised by Mr. Clarke, in reply to your telegram of the 30th, that they will be able to get a good portion of your 6" Pipe, rolling the latter part of Oct., and he wishes you to advise me how much of the entire shipment you wish to start this month,

(Testimony of L. E. Doan.)

as it may be possible he can get three (3) carloads, or more, shipped in October, and possibly all.

I do not want you to think that I am neglecting anything in Texas, as my trip so far has been exceptionally beneficial for, not only the Supply Company, but for us personally, and I will be back in Texas early next week, and I will send Mrs. Dyer direct to California from New York.

My visit here has put me close in touch with Mr. Clarke and Mr. Hoover, and while at Chattanooga I got some results from Mr. Young and am promised better deliveries from now on.

I will be in New York Thursday and Friday, and it is quite possible Mr. Hoover will come on to New York to-morrow to meet me there. Mr. Hoover sends best regards.

Very truly yours,

B. T. DYER."

BTD:G. [206]

I remember receiving that letter. Introduction of letter objected to by defendant as being a self-serving declaration.

Objection overruled. Exception noted.

In our Shreveport operations, I had placed an order with the Lucey Company for a large amount of casing to be used in Shreveport, and Mr. Dyer was in that county at that time, although I had protested against his going back there, but as long as he was there, on account of his connection with the North Texas Supply Company, handling oil well supplies, I wired him to see Mr. Hoover, and see

(Testimony of L. E. Doan.)

if he could not rush this pipe. That is all. It is on account of his connection with the North Texas Supply Company. It has no connection between Mr. Dyer and myself, but as long as he was president and manager of the North Texas Supply Company, I thought he might assist in getting that pipe.

It was after Titus went to Shreveport and after I paid the \$30,000 on the Lamb tract that I learned the offset well was in water and not in oil.

Letter introduced and marked Plaintiff's Exhibit 82.

Plaintiff's Exhibit No. 82.

(Letterhead THE FORT WORTH CLUB.)

"Fort Worth, Texas, Jan. 10.

Dear Larry.

When I packed the office things I did so with care and according to your instructions, taking each drawer and placing it in the box and separating each lot with plain paper. I don't know the Santa Maria books at all. I have some recollection about something you mentioned not to send to keep with our things and if there is another box it is with my boxes in Bekins storage at San Francisco. [207]

I have wired Miss Lawton to go through the few boxes I have in storage, which are in a private room, and if it is there it will be expressed to you.

Very truly,

B. T. DYER."

I think there is a box in storage there, if my memory is correct. The oil well in the N. W. $\frac{1}{4}$

Sec. 28-4-14' in Oklahoma that we were watching, and which lies nearly two miles east the 36 acres, is down and reported dry. Opinion is the pool goes more to the west—even more so than the 36 acres. Yesterday at Wichita Falls I had a half way offer of 250.00 for our piece—talked with Couch and wired the party to-day we would take 330.00 and allow him 10%. Hope this is O. K. with you. If not advise.

DYER."

Telegram introduced and marked Plaintiff's Exhibit 83.

Plaintiff's Exhibit No. 83.

(WESTERN UNION TELEGRAM.)

"WA Washington DC 1104AM June 2 1919.

L. E. Doan,

Care Ft. Worth Club,

Ft. Worth, Texas.

Am very glad to have Lucey subscribe Fifty thousand dollars His first twenty-five thousand dollars must be in your hands in Shreveport in time for fifty thousand payment on Pine Island property stock I will subscribe ten thousand to his Supply Company but should not be called on for this until we have paid for our Pine Island lease Stop With Midfield well in draining our property we should either sell or make arrangements to drill well at once Stop Is it not feasible to organize company on usual basis and sell enough stock to at

(Testimony of L. E. Doan.)

least drill well taking chances on disposing of our remaining stock later Will arrange to meet you in Shreveport about fifteenth or sixteenth Stop I approve new leases you are getting near Shreveport but have doubts about taking on proposition [208] from ?om Gulf Company concerning one hundred sixty aced

LOUIS TITUS. 123 PM''

I do not know whether that telegram was in response to a telegram or letter. I put it up to Titus about a 160-acre proposition that the Gulf Company had offered and he did not approve of it. That was in Stephens County in deep territory. I told Dyer that I was through with Texas; that was the latter part of May or first of June when we organized that North Texas Company. This proposition had been put up to Titus that it looked good, with a big well close to it. I was not enthusiastic; I merely put it up to Titus; if I had told him to take it he would have taken it. He would have gone into any proposition practically that I recommended, but I simply made a suggestion to him and he replied as you say there.

At the conversation on January 21, between Dyer and myself we both got very angry. After that time I took the matter up with Dyer again and he took it up with me. Some two or three weeks later he came to Shreveport. That is when we had the big dispute at Shreveport; on a Sunday morning he came into the hotel when I was eating breakfast, and he came in and sat down. I said, "What are

(Testimony of L. E. Doan.)

you doing over here?" And he said, "I have a proposition of 40 acres over in Oklahoma, and I want to borrow \$40,000 on our Doan Oil Stock." Well, it was such a ridiculous proposition, because he did not have any oil stock, he had never paid for any Doan Oil stock. Even on the compromise proposition I had offered him on January 21st he did not own the stock, because it had not been paid for, and yet he comes over and wants to borrow \$40,000 on stock that he did not own or did not control; so we got *over* a dispute over the thing there, [209] and we passed some very angry words, which I regretted very much, and apologized to Mr. Dyer afterwards for the language I used.

The \$3000 check above referred to was offered in evidence and marked Plaintiff's Exhibit 84.

Plaintiff's Exhibit No. 84.

(CHECK.)

Fort Worth, Texas, Dec. 29, 1919. No. 124.

The First National Bank of Fort Worth.

Pay to L. E. Doan or order \$3000.00 Three and no/100 Dollars.

B. T. DYER.

1 Santa Marie Well.

(Endorsed:) "L. E. Doan." "Received Payment Through Clearing House Jan. 23, 1920, National Bank of Commerce, Fort Worth, Texas." "Pay to the order of any bank, trust or express company 82-2 Jan. 21, 1920. 84-2 All Prior En-

(Testimony of L. E. Doan.)

dorsements Guaranteed First National Bank,
Shreveport, La.”

I am not positive whether I had any further conversation with Mr. Dyer until I met him in San Francisco in April. I might have seen him later on in Fort Worth, I don't know. It is my recollection that I went to Fort Worth within a few days after that, and had a further talk with Tom Dyer. I went over the whole proposition with him again, and I said, “Tom, you have absolutely failed in every respect to do any of the things that you agreed to do, and I do not think that you are entitled to anything, whatever.” I said, “in the first place, you agreed with Captain Lucey to go up there and take charge of the North Texas Supply Company, and carry out all of those agreements that you made with him, then you made a separate agreement with me to do those things and you have absolutely failed to do all of those things, and then we made this compromise agreement on January 21, you promised to send me the money the next day and you did not send it, and [210] I think you are out entirely. I do not think you are entitled to anything.” “Now,” I says, “I will tell you what I will do. I may be wrong about this thing, it is possible, I do not want to do you an injury, I never wanted to do injury to anybody in my life, you state your case to Captain Lucey and Louis Titus, and I will do the same thing, and I will tell them to give you the best of it, and if you are entitled to anything I will tell them to give you the

(Testimony of L. E. Doan.)

best of it, because I want you to get everything that you are entitled to." That was the conversation I had with him, a few days afterwards, and I repeated that same offer to him again in San Francisco, along in April, before the suit was started. I think we had a conversation at Fort Worth and I repeated the same conversation again at the Palace Hotel in San Francisco.

Letter introduced and marked Plaintiff's Exhibit 85.

Plaintiff's Exhibit No. 85.

(Letterhead DOAN OIL COMPANY.)

"Shreveport, La., May 12, 1920.

Mr. C. B. Colby, Pres.,

North Texas Supply Company,

Wichita Falls, Texas.

My dear Colby:—

Replying to yours of the 10th from Fort Worth, beg to say that while in California I spent three or four days with Captain Lucey and discussed with him the North Texas Supply Company's situation. I told him that I understood that you had made a call for the balance of the subscription, and he said that he did not understand that you would make a call until a little later. However, I am in full sympathy with anything that Captain Lucey wants and desire to co-operate with him in every particular, but, of course, I cannot speak for others. At this time I desire to call your attention to the alleged agreement to pay Ten Thousand

Shares [211] to Mr. Dyer. I discussed this matter with Captain Lucey, and he is of the same opinion, that I am, that Mr. Dyer did not earn this compensation, in fact he did not earn his salary. He did not carry out his agreement to remain in Wichita Falls and do all the things that were originally planned. I, therefore, at this time on behalf of Louis Titus, whose stock has been turned over to me, S. S. Raymond and my son, protest against the payment of this Ten Thousand Shares to Mr. Dyer and will hold the directors and stockholders of the North Texas Supply Company responsible if they do pay it.

Mr. Titus only went into the North Texas Supply Company at the request of Captain Lucey and myself, and it was understood that the Lucey Company would take over the stock of the North Texas Supply Company at book value at any time. He has requested me to dispose of his stock to the best advantage, possibly you may know of someone who would like to take it over: also S. S. Raymond's stock and my son's stock. Probably some of the boys in the Lucey Company would like.

While I am perfectly agreeable to turn over to you Captain Lucey's certificate for Ten Thousand Shares, and while I do not doubt your good faith in the matter, I would like a letter from Captain Lucey requesting me to make the assignment when I will immediately turn it over to you.

Possibly if you would write a letter to all of the stockholders of the North Texas Supply Com-

pany, setting forth fully in detail the exact situation and give them an opportunity to vote on the matter at a meeting, they might all be induced to come thru with the balance of this subscription. I never had any notice of any meeting called for the purpose or even discussing the matter of calling payment of the balance of the stock subscription. It [212] seems to me that the proper thing to do would be to postpone this matter until it can be done regularly, and after due notice to all stockholders and directors.

I am writing Captain Lucey to-day in regard to the transfer of Ten Thousand Shares of stock, as soon as I hear from him I will take the matter up with you. If it is Captain Lucey's desire that all the things mentioned in your letter be carried thru, I will co-operate with you fully with the exception of the payment of Ten Thousand Shares to Mr. Dyer, which I will protest as long as I have an interest in the North Texas Supply Company. I am mailing Captain Lucey a copy of this letter.

With kindest personal regards, I remain

Very truly yours,

L. E. DOAN."

LED/K

cc—Captain Lucey.

(Rubber stamp:) "North Texas Supply Co., received May 17, 1920. Graham, Texas."

Telegram introduced and marked Plaintiff's Exhibit No. 86.

(Testimony of L. E. Doan.)

Plaintiff's Exhibit No. 86.

(WESTERN UNION TELEGRAM.)

"A21DA 58 NL

"1920 Mar 22 AM 2 47

Shreveport La 21

2893

B. F. Dyer

Care American Oil and Eng Co 910 Dan Waggoner Bldg Ft Worth Tex

I am very sorry for the harsh words I used in our argument today and I sincerely apologize It was all said in the heat of argument and I sincerely regret it I will be in Ft Worth Monday next for the automobile trial I will write you tomorrow a proposition which I trust will meet with your approval

L. E. DOAN" [213]

I testified in a deposition taken in this case before it was transferred to the Federal Court that Dyer was to make the investment in the North Texas Supply Company and that he was to divide the stock with me and that I was to get half the bonus stock. I also testified in that deposition further back that we were discussing the settlement that was made on the 21st day of January. I never made that statement until after that talk Mr. Dyer and I had on the 21st day of January, and this statement was made in connection with that. I refer to my testimony where I stated that I told Mr. Dyer the thing was all off, absolutely off, be-

(Testimony of L. E. Doan.)

cause he had absolutely failed in the first place to carry out his contract and that the proposition I made was simply a compromise proposition at the time.

Part of said deposition was offered in evidence, and in narrative form is as follows:

“As a compromise matter I told Dyer that if he would pay me back all his back indebtedness—I needed some money at the time—and carry out his agreement with the North Texas Supply Company, that I would carry him providing—for a certain number of shares of stock, if he would discount it 25%, I would carry him for it; but I afterwards withdrew that proposition, because he had not sent me the money he agreed to send me. I had to go and borrow some money right away. That was simply a compromise proposition. It was made at Fort Worth. Nobody was present but Dyer and myself. He was going to give me all he owed me—six or eight thousand dollars in cash, and was going to give a dollar a share for the stock (Doan Oil Company stock) and to have half of the stock that he got in the North Texas Supply Company; half of the stock that he agreed to take—and whatever other profits he might make. That conversation was several months ago. I waited [214] about thirty days before I withdrew it, to give him a chance to raise the money; he did not do it and I withdrew it. I had another conversation with him and told him the thing was all off, absolutely off, because he had absolutely failed in the

(Testimony of L. E. Doan.)

first place to carry out his contract. The proposition I made was simply a compromise proposition at the time.

Q. This North Texas Supply Company was capitalized for how much? A. 100,000 shares.

Q. How much was paid in?

A. 50,000. I subscribed for 10,000 shares for my son.

Q. And were you to divide the stock with Mr. Dyer? A. Not my son's stock, no sir.

Q. With Mr. Dyer's stock, were you and he to make that investment in partnership?

A. He was to make the investment.

Q. Was he to divide the stock with you?

A. Yes, sir.

Q. Were you to get half the bonus stock?

A. Yes.

Q. And all the money that you actually put in the North Texas Supply Company was about \$5,000 for your son, wasn't it?

A. Yes. At the time I first started the Doan Oil Company I suppose I had fifteen or twenty thousand dollars invested in Louisiana in that company. I kept on with advances until I had put about \$110,000 in it. I told Dyer that provided he kept his contract in Wichita Falls and paid me what money he owed me I would carry him along in the Doan Oil Company and he need not raise the money himself, he to give me a quarter. I never had any other conversation with him, although that was a thousand times more than

(Testimony of L. E. Doan.)

he was entitled to. It was a compromise matter rather than have any trouble with Dyer; I told him I would do that. I have been friendly with him a good many years and have known him ever since he went to Bakersfield about 1905. I have always found him to be square and honest. As to this being the first time that I ever had a jar with him, I have very frequently talked to Dyer about his habits,—methods [215] of doing things; Dyer is a very impulsive fellow, you know, and tries to do a good many things which are not according to Hoyle; and I have jumped on him pretty strong a good many times about that and told him that he lost caste,—he lost his credit by reason of his habits. I went down to Anglo Bank and got credit for him, and I went to the Central Bank in Oakland, so that he could borrow money whenever he wanted,—out of pure friendship for him, I have loaned him money whenever he wanted, as much as ten, or twelve thousand dollars. I did that many times. There has not been a time in several years when Dyer has not owed me a lot of money.”

There was no secret about the purchase of the property in Louisiana. The Giffen well and the Greer tract were purchased about the 10th of April and went to the Doan Oil Company. The Lamb tract also went into the Doan Oil Company, also the Couch tract in Oklahoma. I held the Lamb tract in trust for the Doan Oil Company for con-

venience in making transfers. I did that at the suggestion of Titus.

Telegram introduced as Plaintiff's Exhibit 87.

"Plaintiff's Exhibit No. 87

(WESTERN UNION TELEGRAM.)

1920 Dec 2 P M 3 27

"A365D 11 Collect

Wichita Falls Tex 417 P 2

B T Dyer

C 059

Care W H Matson Balboa Bldg San Francisco Calif

No transfer to leasehold since one to L E Doan

KAY AKIN and KENLEY

In regard to the automobile, that was in litigation. I told Dyer that as soon as it was settled we would adjust that matter. It was in litigation at the time I told him to put in that expense account, I never told him to put that automobile in. [216] I never allowed the expense account. That is a matter between Dyer and myself. It never went into the Doan Oil Company. I told him to render an account of the expenses he had incurred in regard to the purchase of the Lamb and Oklahoma tracts. The only protest I made at the time was shortage of money. Afterwards, I took over the proceeds of the automobile litigation and gave Dyer credit for half on his personal indebtedness. I turned the proceeds into the Doan Oil Company. Dyer owed me on money that I advanced him before he left California. At that time he did not

owe me anything except advances to the Santa Maria wells.

Letter introduced as Plaintiff's Exhibit No. 88.

Plaintiff's Exhibit No. 88

(Letterhead DOAN OIL COMPANY.)

"Shreveport, La., Sept. 22, 1920.

Mr. B. T. Dyer,

c/o American Oil & Engineering Co.

Dan Waggoner Bldg.

Fort Worth, Texas.

Dear Sir:—

I am enclosing you herewith final statement of the Doan Syndicate at Santa Maria. In order to close this transaction I sent the Lucey Manufacturing Corporation my check for \$3,490.33. It will appear from the statement that they over-subscribed. In addition to the \$6,000.00 advanced by me for you there would be due an additional sum of \$443.47, together with interest at 6%.

Very truly yours,

L. E. DOAN."

Encl.

LED-u.

Mr. Doan:—

You should remit Lucey Manufacturing Corporation \$3,490.33, and I have made an entry in the Journal of the L. E. Doan Syndicate [217] books giving you credit for this amount:—

Lucey Manufacturing Corp.

Cash Investment\$54,750.00

Supply Account 21,507.67

 Total 76,257.67

 Applied as purchase price of one-half in-
 terest in property 40,000.00

Balance 36,357.67

 Charged up with one-half of operating
 loss as per statement 32,767.34

Difference due Lucey Mfg. Corp.\$ 3,490.33

(Letterhead WINSTON, MAGUIRE and
PEARSON.)

Shreveport, La., September 15th, 1920.

L. E. Doan, Esq.,

Merchants Building,

Shreveport Louisiana.

Dear Sir:—

In compliance with your instructions to bring the books of the L. E. Doan Syndicate up to date, and prepare a statement therefrom, in view of the fact all the assets have been sold, and the business is now ready for liquidation, we beg leave to submit this our report, together with the accompanying exhibits.

The L. E. Doan Syndicate is composed of Lucey Manufacturing Corporation, which has a one-half interest therein, for which it agreed to pay \$10,000.

cash, and advance \$30,000 worth of supplies. The other one-half is divided equally between L. E. Doan, J. F. Carlston, B. T. Dyer, H. Fleishhacker, and A. Strassberger, who each invested \$6,000 cash. The Lucy Manufacturing Corporation was bound further to make an equal investment of \$30,000.00 to maintain its one-half interest.

Exhibit "A" Trial Balance, September 15, 1920.

Exhibit "B" Statement of Operations. [218]

Exhibit "C" Balance Sheet, September 15, 1920.

Respectfully submitted,

WINSTON, MAGUIRE and PEARSON.

By J. B. MAGUIRE.

(Letterhead WINSTON, MAGUIRE and
PEARSON.)

L. E. DOAN SYNDICATE.

EXHIBIT "A."

TRIAL BALANCE

September 15th, 1920

	Debits	Credits
Automobile Expense	\$ 3,169.74	
Commissary	4,710.89	
Construction Labor	3,310.00	
J. F. Carlston—Investment ..		\$ 6,000.00
Drilling Supplies & Equip- ment	46,859.03	11,021.92
Drilling Expense	21,835.28	
L. E. Doan—Investment		6,000.00
L. E. Doan		2,767.34
B. T. Dyer—Investment		6,000.00

Expense	\$ 1,472.86	
Freight and Drayage	10,395.29	
H. Fleishhacker—Investment		6,000.00
Gas, Water and Oil	12,775.81	
Insurance	660.74	
Lucy Manufacturing Corporation		54,750.00
Lucy Manufacturing Corp.—Supplies		18,017.34
Lease Account	10,000.00	
Over and Short—Cash		61.85
Salary—L. E. Doan, Jr.	1,332.45	
A. Strassberger—Investment		6,000.00
Taxes	96.36	
	<hr/>	<hr/>
	\$116,618.45	\$116,618.45
	<hr/>	<hr/>

[219]

(Letterhead WINSTON, MAGUIRE and
PEARSON.)

L. E. DOAN SYNDICATE.

EXHIBIT "B."

OPERATING STATEMENT

September 15th, 1920

Drilling Supplies & Equipment	\$46,859.03	
Sale Price of Salvage	11,021.92	
	<hr/>	
Net Loss	\$ 35,837.11	
Automobile Expense	3,169.74	
Commissary	4,710.89	

Construction Labor	3,310.00
Drilling Expense	21,835.28
Expense	1,472.86
Freight and Drayage	10,395.29
Gas, Water and Oil	12,775.81
Insurance	660.74
Lease	10,000.00
Salary—L. E. Doan, Jr.	1,332.45
Taxes	96.36

Total Disbursements:\$105,596.53

Less Credit:—

Cash Over & Short, Santa Maria Bank

Balance 61.85

Loss:\$105,534.68

Less:

Amount paid by Lucy Manufacturing

Corporation, for one-half interest in

property 40,000.00

Net Loss From Operating\$ 65,534.68

Net loss from operating distributed as [220] fol-
lows:

Lucy Mfg. Corporation	1/2	\$32,767.34	
L. E. Doan	1/10	6,553.47	
J. F. Carlson	1/10	6,553.47	
B. T. Dyer	1/10	6,553.47	
H. Fleishhacker	1/10	6,553.47	
A. Strassberger	1/10	6,553.46	\$65,534.68

(Letterhead WINSTON, MAGUIRE and PEAR-
SON.)

L. E. DOAN SYNDICATE.

EXHIBIT "C."

BALANCE SHEET

September 15th, 1920.

ASSETS.

Lucy Manufacturing Corpora- tion	\$54,750.00
Supply Account.....	18,017.34
Total Investment Lucy Manufacturing Corporation	\$72,767.34
Payment for one-half interest in prop- erty	40,000.00

Balance to credit for development.....	\$32,767.34
Debit—One-half entire loss operating...	\$32,767.34

Balance due Lucy Mfg. Corpn.... NONE

J. F. Carlston—investment...\$.

Debit—one-tenth entire

loss 6,553.47

Credit—Original invest-

ment 6,000.00

Balance due L. E. Doan Syndicate....\$ 553.47

B. T. Dyer—Investment

Debit—One-tenth entire

loss \$6,553.47

Credit—Original Invest-

ment 6,000.00

Balance due L. E. Doan Syndicate.. 553.47

H. Fleischhacker—Investment		
Debit—One-tenth entire		
loss	\$ 6,553.47	
Credit—Original invest-..		
ment	6,000.00	553.47
Balance due L. E. Doan Syndicate		
A. Strassberger—Investment		
Debit—One-tenth entire		
[221] loss.....	\$ 6,553.46	
Credit—Original invest-		
ment	6,000.00	
Balance due L. E. Doan Syndicate..	\$	553.46
TOTAL	\$	2,213.87

LIABILITIES.

L. E. Doan—Investment Ac-		
count	\$ 6,000.00	
—Open Account.....	2,767.34	
	8,767.34	
Debit—One-tenth entire loss..	6,553.47	\$2,213.87

(Letterhead DOAN OIL COMPANY.)

Shreveport, La., Oct. 16th, 1920.

Mr. D. T. Dyer,

512-513 Dan Waggoner Bldg.,

Fort Worth, Texas.

Dear Sir:

Replying to yours of the 11th; you evidently misunderstood me in regard to the Santa Maria books. I have all the books which McLane wrote up for me and they include everything except a portion of the sale of material made by Woods

and Hausen. I brought the books from San Francisco before the office was closed and left the vouchers and some of the old check books.

The statement rendered by Mr. Maguire and Pearson is absolutely correct.

Yours very truly,

L. E. DOAN.

LED-u [222]

The above letter shows that Dyer owed me some \$3490. This letter was written September 22, 1920. On January 21, Dyer paid me \$3000, you know, and that cut his \$6000 indebtedness down.

Redirect Examination.

With reference to telegram dated July 14, and marked Plaintiff's Exhibit 64, and referring to the last portion about the Terry deal, that related to the Considine-Martin deal. The way I got into the Considine-Martin Oil Co. was this, Mr. Terry, and Mr. Martin, and Mr. Howard, and a few other individuals in Fort Worth had secured an option on a piece of property; I did not know anything about it, had made no investigation of it at all, did not care anything about it, but Joe Terry, an old friend of mine, whom I had known for many years, came to me and said, "Doan, I have got a chance to get in on this deal; we have got to put up \$10,000 for this option, and I have not got the money; would you let me have the money?" I said, "How much money do you want?" He said, "I want \$2,666.66. I said, "Joe, sure I will let you

(Testimony of L. E. Doan.)

have the money.” And so I gave him \$2,666.66, which secured for him a certain interest in that option. Joe said to me, “If I get anything out of this I will split with you on it.” I loaned him the money as an old friend, [223] just to help him along. Later on, from that option which organized a syndicate—the \$10,000 option was only a small item; they had to pay something like a couple of hundred thousand dollars later on to secure this property, and in order to do that each one of these parties who went in on that original option deal had to sell so many units to make up this \$200,000; they had to go out and promote a company in order to raise this \$200,000. Mr. Terry had a certain amount of money allotted to him that he had to raise, so I thought probably Mr. Dyer might be able to help him raise that money, and I wired Mr. Dyer to go and see how Terry was getting along, and to give him help to sell some of these units. Mr. Dyer never took any interest in the matter, and never sold a unit. Joe Terry sold the full allotment of units that were sold, every one of these. That was the way I secured my interest in the Considine-Martin deal. I gave Terry a check for \$2667.

Check introduced as Defendant's Exhibit “G.”

This check dated May 22, 1919, signed by L. E. Doan in favor of J. Terry for \$2667.00.

I never made the following statement, testified to by Dyer with reference to the formation of the Doan Oil Company: “We have arranged to make

(Testimony of L. E. Doan.)

a \$300,000 pool, Mr. Titus has agreed to take half of it, Captain Lucey a sixth of it, and you and I a sixth apiece." I did not have the conversation with Dyer and he did not say the things to me which he testified to concerning the conversation about Wynn Meredith, concerning Dyer getting a salary from American Oil & Engineering Company and my getting a salary from the Doan Oil Company and each keeping our own salary.

Recross-examination.

With reference to Joe Terry, I got 15,000 shares in that concern; that was what I got out of it: Terry got 15,000 shares [224] also. I did not tell Dyer to make a note of it when I put up the money. I did not tell him I was carrying Joe Terry there and helping him out on any joint account. I think Joe Terry is in the East somewhere. He is in Kentucky.

Carlson and Fleishhacker were in the Santa Marie well with others. I sent them statements at the same time I sent Dyer the statement September 22, 1920; their amounts were \$6500 apiece. They had already paid \$6,000, and there was, therefore \$500 more due from them.

Deposition of A. J. Carr, Offered in Evidence on Behalf of Defendant.

My name is Arthur James Carr. I live in Houston, Texas, and have lived there since 1914; am now engaged as Vice-President and General Manager of the Lucey Manufacturing Corporation of

(Deposition of A. J. Carr.)

Texas. I have held that position since March, 1915. I have known Dyer approximately eight years. I have known Doan approximately eight years. I know J. F. Lucey; he is the President of the company for which I work and resides in New York. The Lucey Manufacturing Company is engaged in the manufacture of oil well drilling machinery and its sale. It is a large company, engaged in business all over the world. I am interested in the North Texas Supply Company and own \$2,000 worth of stock. It was organized in the former part of June, 1919. I was present when this company was first organized. The discussion as to its organization took place at Fort Worth Club, Fort Worth, Texas. The organizers were Mr. Lucey, Mr. Doan, Sr., and Mr. Dyer; no one else. I was not present at all the conferences; I was present at the preliminary conferences and after it was organized I went to Wichita Falls. I was present with Dyer, Doan and Lucey in the preliminary arrangements in which their connection with the company was discussed. I was present at several preliminary conversations with reference to its organization in which Dyer [225] and Doan were present, and I think Captain Lucey was present at all those, too. The substance of the conversations in which Dyer and Doan present in reference to the organization of the Company is as follows: When the subject first came up in regard to organizing the North Texas Supply Company at Wichita Falls, Capt. Lucey first

(Deposition of A. J. Carr.)

brought the matter up, and decided, on account of the large amount of business there was to be had in that territory, that we should go in there or have some representative in there to sell our manufactured products and the best way to do that would be by organizing a subsidiary—not a subsidiary company but another company. He interested Mr. Doan and Mr. Dyer, and he said he would do it with the understanding that Mr. Dyer was to go to Wichita Falls and take charge of the business and become President of the company and manage the business, and with that understanding why they agreed to go ahead. They agreed to go ahead and organize the company. Mr. Dyer was to be President and General Manager. In regard to stock subscriptions of the company, to the best of my recollection and knowledge Capt. Lucey agreed to start the company off with ten thousand dollar subscription, and in fact gave his check for ten thousand dollars right then to start the company off with, and Mr. Doan agreed to take ten thousand dollars worth of stock and Mr. Dyer agreed to take ten thousand dollars worth of stock. There was a stock bonus consideration. To the best of my recollection the proposition was, that Dyer was to be given a ten thousand dollar stock bonus at the end of the year, provided the company had made one hundred thousand dollars worth of profits, as a part of his compensation, but that was to be over and above the original ten thousand dollar subscription. Dyer was to receive

(Deposition of A. J. Carr.)

\$500 a month salary and expenses. The understanding, or rather [226] the arrangement was made that Mr. Dyer was to go to Wichita Falls and not only manage this company but form a company or drilling contracting companies, and possibly a rig building company, and that he might do anything else up there that did not interfere with the business in that territory. He was to devote all of his time to those particular things that they agreed upon, that I mentioned above there, in that particular territory. He was to organize a contracting drilling company and possibly a rig-building company. He could look the situation over and if he thought it was a profitable thing to do as far as the rig-building company was concerned. The North Texas Company was finally organized and had commenced business. Dyer became president and remained so until the early part of this year. He left approximately in March or April. As far as I know he left by his own accord. While Dyer was engaged I had occasion to do business with the Company by which I could ascertain whether he was in Wichita Falls any length of time. On very numerous occasions I couldn't get in touch with Mr. Dyer, and other occasions I did. There were a great many times I called up over long distance phone and sent telegrams and one thing and another and they advised me that Mr. Dyer was away. I met Dyer in Fort Worth on a great many occasions. Dyer subscribed for ten shares of the company. I don't

(Deposition of A. J. Carr.)

know whether he ever paid for that stock or not. I don't know how much he owns now. He subscribed or agreed to subscribe for \$10,000 originally. He agreed to take that much in the preliminary organization. The value was \$1.00 per share. As a part consideration and as an inducement for him to go over there and go into this business they agreed to see that Mr. Dyer received a bonus of ten thousand dollars worth of stock at the end of twelve months, providing the company had [227] made a profit of one hundred thousand dollars. I don't believe the Company made \$100,000 within the twelve months. As to these subsidiary companies that it was agreed Dyer was to organize, only one was organized to my knowledge. That was a drilling company. It is not doing business. I don't know how long it was in business or did business. The trade and business conditions and the supply business during the year 1919 at Wichita Falls were the best of any district I have ever known. There was a greater demand for rotary drilling equipment. The rig-building business was excellent. In fact, all oil well business was excellent.

Cross-examination.

I don't recall how many preliminary conferences at Fort Worth I attended. Mr. Doan and Mr. Dyer and Capt. Lucey and myself all roomed on the same floor, and we were discussing it in the rooms and in the dining-room and in the Club room. So I couldn't tell you whether a half dozen or two

(Deposition of A. J. Carr.)

dozen times. These preliminary discussions extended over three or four days or a week. Dyer was in most of them. I could not say whether he was in all. He was present in the conversations as to which I have testified. As to the conversations referring to Dyer devoting his time to the North Texas Company I know I was present. That discussion was started by Lucey. Lucey was most interested in the company and the largest stockholder in the Lucey Manufacturing Company and the organizer of that company, and the North Texas Supply Company caused to be sold and delivered considerable oil well supplies and machinery. It did a very large business while under the supervision of Dyer. As to the Company for that period making one of the best showings [228] ever made by a company under my supervision for its limited capital, I don't think that is true, considering the advantages that were given it and the conditions. Dyer experienced no more difficulty in obtaining the necessary materials, rotaries, etc., for delivery to his customers than any other concern in the business in that particular territory. He experienced considerable difficulty in obtaining deliveries on all that he wanted. The Company was in the nature of a subsidiary company of the Lucey Manufacturing Company. His company was trying to get deliveries for its trade. At the beginning he was pretty instrumental in these efforts himself, but not so much so towards the latter part. During the last six months most

(Deposition of A. J. Carr.)

of the efforts that were made were Rose and Johnson. For the last two months of last year and the first part of this year we were in a very good position to give deliveries on everything they wanted and more too. On one or two occasions Doan took up with us the question of assisting Dyer in getting deliveries. I think that Dyer slackened up in his efforts to make the business a success some time in the first part of October of last year. I wrote a letter dated January 27, 1920, addressed to Dyer in which I stated that I congratulated him on the remarkable showing made by the company and that I felt sure this success would continue throughout the coming year. I will swear that it was agreed that two drilling companies were to be organized. I will not swear that the organization of the second depended upon the success of the first. Early in 1919 I took up with Lucey the question of having Dyer and Doan come to Texas to investigate the Texas oil fields and assuring them that there were great opportunities. Lucey communicated the information to Dyer and Doan and they afterwards came to Texas. It was the understanding [229] that we should give preference to the North Texas Supply Company in filling orders. We had been anxious to get into that territory. Dyer did have considerable trouble in getting deliveries at different times, and he did, at least on one occasion, take the matter up with Lucey. I received a wire from Lucey telling me to give them deliveries, or that he would dis-

(Deposition of A. J. Carr.)

continue the organization of their company. To the best of my memory the wire to Captain Lucey from the North Texas Supply Company was really a misrepresentation of the facts at that time.

A room was kept at the Fort Worth Club for the benefit of Doan, Dyer and the Lucey boys and half the expense was paid by the Lucey Company. I believe the other half was paid by the North Texas Supply Company. I made no objection to that. As far as I know Dyer sold all the material and supplies that he could get from our company. The probability is that if he could have gotten more deliveries he could have sold more stuff. I will say that conditions at that time did not require salesmanship to be applied in the field. He was a pretty live wire when he first started off but I think he slackened up. The ultimate object of this organization was that the Lucey Company would finally become the owners of the North Texas. That has not been accomplished yet. I have always regarded Dyer as a pretty hard working man and he has got considerable energy. He showed that in the earlier stages of the game, the first few months. I cannot say that he showed it throughout his time. On two or three occasions he said to me that he was very much discouraged and wanted to get back in the operating business.

Redirect Examination

Dyer's ability in the oil business, his wide acquaintance [230] amongst the oil men was the chief reason the organizers of the North Texas

(Deposition of A. J. Carr.)

Company desired him to actively manage the company, and it was discussed there that he would go there and devote his time to it and with his wide acquaintance and experience with the company would make a good showing. He was to give all of his time to the North Texas Supply Company and the drilling companies we contemplated forming and also anything else in the immediate territory that he could take on. The salesmen and purchasing agent of the North Texas Company were secured from the Lucey organization. They were good men and experienced and had worked for the Lucey Company for some time. It was understood that they would be furnished to the North Texas Company and Dyer knew that. Dyer was not under me and I had no control over him. The North Texas Company was an independent corporation. I subscribed for my stock for my own benefit and still hold it. At all times we gave the North Texas Company preference in shipments, even to the extent of curtailing shipment to our own customers. At the time the North Texas went into business we had many advance orders and more than we could supply.

Recross Examination

Dyer went to Shreveport and sold a good deal of stuff there. I had known Dyer in California and known he had been a successful oil man and that was the reason I suggested to Lucey that he and Doan, who had an office together in San Francisco, should come to Texas. I knew that prices

(Deposition of A. J. Carr.)

of rooms, meals and living expenses were very high in Texas. The \$500 salary paid to Dyer was a good salary from the Supply Company's standpoint.

Testimony of L. E. Doan, Jr., for Defendant

L. E. DOAN, Jr., a witness called on behalf of defendant, [231] testified as follows:

I am in Stockton at the present time organizing a new automobile supply business. I have been in the oil business. I spent some time in the Midway Field in 1911 and 1912 and later on in other fields. In 1918 I was in the army; was discharged. I left California for Texas on April 23, 1919. Mr. Dyer and Mr. Hoag accompanied me. I arrived at Fort Worth, Texas, on April 26th. I went to the Fort Worth Club and lived there for a short time until my wife came out later. I went out to the oil fields, to the Burke-Burnett field and made one trip to Wichita Falls with Dyer a few days after I arrived at Fort Worth. I made a trip to Wichita Falls with Lucey, Carr and my father. That was the latter part of May. We left Wichita Falls that night and arrived at Fort Worth the next morning. I saw Dyer in the morning upon my arrival at Fort Worth. Lucey, Carr, my father and I were present. We met Dyer in his room at the Fort Worth Club. He was in bed. Captain Lucey spoke to him first. As I say, Mr. Dyer was in his bed, and Captain Lucey walked into the room and said, "Good morning,

(Testimony of L. E. Doan, Jr.)

Mr. President," and Mr. Dyer asked what he was talking about, something like that, and then Captain Lucey went on to explain that he wanted to organize a supply company in Wichita Falls. He pointed out the advantages of the supply company. He said that the Lucey Manufacturing Corporation was not properly represented up there, they had a contract with some other concern, but their goods were not placed to his satisfaction, and he wanted to put in a company; he could not put in a branch of the Lucey Company on account of a contract he had with the other people, but he wanted to organize a **new company** and put it in there, and he said that he had been up there with Mr. Carr, my father and myself, to look [232] over the situation, and that on account of the wonderful activity up there that the opportunity was very fine for a proposition of that kind, and he wanted Mr. Dyer to go up there and take charge of the company. Mr. Dyer said that he did not want to go into the Supply business, and then my father spoke up and said he would like to talk with Mr. Carr alone, or Mr. Dyer, pardon me. We left the room, and my father and Mr. Dyer remained there, and later when we were all together again Captain Lucey urged on Mr. Dyer the advantages of organizing this new company, and he told them that he could also engage in the oil business up there along with the oil supply business, and he said there was also money to be made in drilling companies, in rig-building companies, and he said that if Mr.

(Testimony of L. E. Doan, Jr.)

Dyer would go to Wichita Falls and take charge of this company and stay there and run it, that he could organize a drilling company, and his oil company, and he said that if he would go there and take charge for him and organize these drilling companies, that he would see that he got a bonus of 10,000 shares of North Texas Supply Company stock, and Mr. Dyer agreed to do it. We talked about the matter all day, and my father urged upon him the wonderful opportunity he had up there, and he said he would go up and take charge of this company. As to the amount of the capital of the North Texas Company, Captain Lucey spoke about that. The whole thing was Captain Lucey's suggestion in the first place; he said that we could organize a company for \$100,000 and subscribe it all, and pay in half of it, and that with the backing and credit that the Lucey Manufacturing Corporation would give us, and credits that they would secure for us from other sources, the Moon Wire Rope Company, the Manhattan Rubber Company, and other concerns that they did business with, would put us in a position [233] to handle a large amount of business on a small amount of invested capital, because they would give us an unlimited amount of credit; and I think something was said about 90 days or more to pay for it if necessary. Mr. Dyer was present at all of this; it was agreed that the members of the Lucey Corporation would take a large block of stock, and Mr. Titus was put down for 10,000 shares; I was

(Testimony of L. E. Doan, Jr.)

put down for 10,000 shares; Mr. Dyer was put down for 10,000 shares; Mr. Johnson was put down for, I think, 9,000 shares, and, at Mr. Dyer's suggestion, Mr. W. J. McLean was put down for 5,000 shares; the balance was taken by the Lucey corporation. Dyer wrote a memorandum of the amount of stock to which the several parties would subscribe. The memorandum introduced and marked Defendant's Exhibit "H".

Defendant's Exhibit "H"

(Letterhead RICE HOTEL.)

Houston, Texas.

Corp.

Paid up within 90 days.

North Texas Supply Co.

Cap—100,000.00 Por. 1.00

Laws—Tex

Pres., B. T. Dyer 500

V. P., L. E. Doan, 2,500, ~~41000.00~~

Sec. Treas., L. E. Doan, Jr.

Fully subscribed

Paid up 50%

10,000.00 B. T. Dyer, San Francisco

50,000.00 L. E. Doan, Oakland, Calif.

10,000.00 L. E. Doan, Jr., Oakland, Calif.

9,000.00 C. J. Johnson, 250 Wichita Falls

10,000.00 Louis Titus, Washington, D. C.

5,000.00 W. J. McLean, San Francisco [234]

As to the conversation held in the afternoon, at which Dyer was present, Mr. Dyer at first objected to going into the supply business, and Cap-

(Testimony of L. E. Doan, Jr.)

tain Lucey urged upon him to go, and he told him that if he would subscribe for this stock and pay for it, and if he would go up there and manage the business, he would see he got a bonus of 10,000 shares of North Texas Supply Company stock, and he also told him that if he was not in a position to buy the stock himself at that time, that he would see that he was carried, that he would make arrangements to carry him for it. I held the position of Secretary and Treasurer of the North Texas Supply Company. I became such at the time it was organized. I resigned, I believe, last March. Dyer did not, during my incumbency, pay for the stock for which he subscribed. That afternoon when the North Texas Company was organized Dyer, Lucey, my father and myself went to the First National Bank and Captain Lucey deposited \$10,000 to the credit of Mr. Dyer, which was for his subscription, or first payment on his subscription for stock in the North Texas Supply Company, and he arranged at the bank, or spoke to Mr. Andrews, the cashier of the bank, and asked him to extend the North Texas Supply Company the credit—every time they needed money—he wanted the bank to know they were good for it, and he told the cashier at that time that he was standing back of it to the extent, if necessary, of half a million dollars. Dyer and I went to Wichita Falls about June 3d. We arrived there on the 4th and immediately started to seek a location for an office. We began business around the first of

(Testimony of L. E. Doan, Jr.)

July. They did sell some stuff in June. I remained in Wichita Falls until the 13th of November, with the possible exception of one or two week-end trips to Fort Worth. We perfected an organization at Wichita Falls upon our arrival. The Lucey Company had turned over a Mr. [235] Johnson who was one of their salesman and a Mr. Ross from their Houston office. Ross was appointed purchasing agent and Johnson selling agent. Dyer remained in Wichita Falls after he went there not to exceed two weeks; then he went to Fort Worth for a short time and then to California. He was gone about a month. I believe he made three trips to California before the first of the year. He made at least three trips East during that period. After the first two weeks at Wichita Falls I will say that Dyer was not there more than one day a week. We all chipped in and did our best in conducting the business. Sometime in November, I believe, Dyer appointed Johnson as his assistant. As to Dyer ever organizing any Drilling Company, he made an arrangement with two contractors to take one of the rigs and drill some holes on a 50-50 basis for the North Texas Company; that was rather an unsuccessful proposition.

I recall the conversation between Dyer and my father at Wichita Falls at the time the final payment was made on the Burke-Burnett piece. I believe my father got there the day the deal was consummated. There was a great deal of talk re-

(Testimony of L. E. Doan, Jr.)

garding the lease. My father stated that he believed that it would be a good idea to lose \$10,000 rather than take a chance and put in this other \$30,000 but there was a chance there, and that Mr. Dyer and I both had been out to see the well, we were not able to find out anything definite about the well from the people who were drilling the well, offsetting it, but Mr. Dyer said he thought there was a good chance to get a well there.

Dyer never organized a rig-building company. The arrangements he made with the contractors was a failure and the rig was finally sold by Dyer to the American Oil and Engineering Company. That was about the middle of November. After it was sold it was [236] employed in the Burke-Burnett field.

I recall the conversation between Dyer and my father on the day the Burke-Burnett deal was closed. I don't recall any conversation and no conversation was had in my presence as testified to by Dyer as follows: " 'Larry, I don't think we had better make this \$30,000 payment, we had better take a loss, let it go by default, because I can stand my share of the loss of the \$10,000 better than I can of the \$40,000.' He said, 'What, you have not lost faith in that, have you?' I said, 'Well, I don't know what you call it, but we have had two weeks at it, and it would look as if there was a little cloud on it, and these fellows next to us seem to be juggling.' He said, 'Well, some friend of mine tells me that he thinks he can sell

(Testimony of L. E. Doan, Jr.)

that'—I think it was for \$75,000—‘and I am going to go ahead and make the payment.’ ” I do not remember Dyer making any statement as follows: “Well if you want to go ahead and make it we will sink or swim together, and if we lose out we will have to work all the harder, let her go.”

Cross-examination

I stayed there until November 13th. I then went to Shreveport. I think the capital we had to run on was over \$40,000 in July. All the time I was there we never had to borrow any money. We asked the stockholders to pay up what they subscribed for. Dyer objected at first going into the supply business. Said he was down there to be in the oil business. He also said that afterwards. Lucey wanted to get Dyer to agree to take charge of the North Texas Company. He didn't succeed at once. Dyer said he did not want to go into the supply business, and my father took him aside and spoke to him. I think my father said to Captain [237] Lucey, “Let me talk to him alone and you go out.” I was there at the time. Carr was also there. I believe that was in the morning. I don't know what happened between Dyer and my father, except that afterwards Dyer agreed to take charge. Lucey and my father urged Dyer to go up there. Captain Lucey said, “If you will take charge of the company, go up to Wichita Falls and manage it, and take your subscription to the stock of the North Texas Supply Company, if you have earned \$100,000 at the end

(Testimony of L. E. Doan, Jr.)

of the year, I will see that you get a bonus of 10,000 shares of stock." By the end of the year, I mean when the Company has been in business for a year. I do not know if there was anything else said by Captain Lucey at that time or not.

I am twenty-nine years old. The deal that Dyer made with the two contractors to drill a well was as follows: They were to take a rig, and they were to put up a certain amount of money, and the North Texas Supply Company put up a certain amount of money, to meet the initial expenses, and they were to drill a well and split the profit 50-50 with the North Texas Supply Company. They drilled a well and put up \$6,000 on the first well and the North Texas Company put in a rig for about \$15,000. They drilled a second well. They lost money on that. It wiped out all the capital of these contractors and left the North Texas Company with the rig on their hands. The financing of the North Texas Company was attended to by Mr. McLean and myself. Lucey established a credit for us at the First National Bank. Later we established a credit at Wichita Falls. That was \$50,000. I arranged it. Dyer may have written letters to the bank at Wichita Falls. Dyer agreed in talking with Lucey to stay at Wichita Falls until the Lucey Company took the North Texas over; that was a rather indefinite date. Lucey said that [238] eventually the North Texas Company would be absorbed by the Lucey Company. In August, 1919, I think Dyer was in

(Testimony of L. E. Doan, Jr.)

Fort Worth most of the time. In September he was in a great many places. Dyer appointed Johnson Assistant Manager. McLean was the bookkeeper. Dyer appointed him when we first organized. Mr. Colby succeeded Dyer as President of the North Texas Company. I was not there at that time.

I have read some of the depositions, but not all of them. Lucey said that they had contracts with some other concerns which would prevent them from going in and putting in their own store in Wichita.

At this point the defendant rested.

Testimony of Joseph Martin, for Plaintiff (In Rebuttal).

In rebuttal, JOSEPH MARTIN was called as a witness for the plaintiff and testified as follows:

I have resided in San Francisco for fifty years. I was in Texas in 1919. I met Doan and Dyer there; we had an automobile trip together. I think Terry, Dyer and myself were present. I remember some conversation with reference to some oil tank cars about May, 1919. Doan said, "Sometime you'll see Doan and Dyer's name on the cars for the oil that came out of the Burke-Burnett field," that is, the Burke-Burnett where they had some property. The conversation was in the automobile.

Testimony of Edward Everett, for Plaintiff

EDWARD EVERETT, called as a witness for the plaintiff, testified as follows:

I reside in San Francisco and am in the manufacturing business. I have known Dyer five years. He was in my office some time in 1919. I remember his using the telephone with reference to Titus. Dyer called Titus from my office. I think that was the latter part of 1919. As I remember, I asked Dyer what the news was from the Doan Oil Company and he said he had no late [239] news. I suggested that he call up Titus and find out right at my office. Of course I only heard one end of the conversation. Dyer then left my office. I don't know whether he went to Titus' office or not.

Testimony of B. T. Dyer, for Plaintiff.

B. T. DYER, a witness called for the plaintiff, testified as follows:

Copy of telegram introduced as Plaintiff's Exhibit 90.

Plaintiff's Exhibit No. 90.

(NITE LETTER)

"Dec. 19th, 1919.

L. E. Doan,

Merchants Bldg Shreveport, La.

Your wire nineteenth received just as I leaving for California I will arrange Santa Maria obligation from California if I am not in Texas before but ask you to send statement Van Nuys Hotel to meet me if possible in time Did you close Santa Maria account since salvage This was not done our last talk

(Testimony of B. T. Dyer.)

on this Stop At same time will you have Doan Oil Co statement Van Nuys for me and also your and my joint account covering Doan Oil Co and Louisiana Stop Will be glad settle both accounts if you wish Stop Try have this for me so I can meet your request Will be Van Nuys for Christmas and keep touch with you Best luck and Merry Christmas Answer.

B. T. DYER."

Above telegram identified by witness as a copy of telegram sent him by Doan. Objection of defendant overruled and exception taken.

Copy of telegram introduced as Plaintiff's Exhibit 91.

Plaintiff's Exhibit No. 91

(WESTERN UNION TELEGRAM.)

"Van Nuys Hotel Los Angeles December 1919

L. E. Doan

Merchants Bldg Shreveport La

Received no word or Santa Marie information at Los Angeles [240] Will fix this up if you can send it here Discounted thirty thousand Lucey accounts in addition have January obligations financed now When can we expect Emery and when do you expect be Ft Worth

B. T. DYER."

Same objection, ruling and exception.

Letter from Lucey to Dyer introduced and marked Plaintiff's Exhibit No. 92.

(Testimony of B. T. Dyer.)

Plaintiff's Exhibit No. 92.

(Letterhead LUCEY MANUFACTURING CORPORATION.)

“Chattanooga, Tenn., Oct. 13, 1919.

Mr. B. T. Dyer, President,
North Texas Supply Co.,
Wichita Falls, Texas.

Dear Sir:

I am in receipt of your statement of September 30th. Please accept my congratulations on the very splendid showing which you have made.

I would like to confirm some standard commercial conditions which we discussed upon your visit to Chattanooga. Your accounts receivable and cash should offset your accounts and bills payable. In your statement you have a deficit of \$40,000.00. In other words, you are over extending the business that much, or, to transact the business which you are transacting, you require an additional \$40,000.00 capital. The only way for you to overcome this condition, is to carry out the original plan and sell only for cash.

I note that you are not giving acceptances for your purchase, and this was the outline of procedure which we agreed upon. There is a very necessary reason why we want you to do this. Had we cared to carry the accounts, we could have installed our own branch. I also advised all our allied companies that you would [241] give them acceptances and I trust you are doing this. If your

(Testimony of B. T. Dyer.)

customers object to paying cash until the completion of an order, you impress upon them the fact that you are compelled to pay cash as your goods are received and you expect them to do likewise,—in fact, I would not accept orders under any other conditions.

In making out your monthly statement, it is always preferable to show in detail the statement of your accounts and bills payable—that is, the date of the original invoice and the date due, although these can be grouped under the different months. The same detail should be carried out in reference to accounts receivable. Our statements always show in detail the month the sale was made under thirty, sixty and ninety days headings, and one heading over ninety days, then a total column.

In reference to your opening up an office in Shreveport, there would be nothing to be gained by your doing this. We organized the company to cover the Wichita Falls district and as we are already represented in Shreveport, there would be no advantage in duplicating our effort. There is a possibility of an opportunity for you in western Oklahoma, Cotton County, to establish a branch, but before doing this, it would be necessary for you to have more working capital or else for business in your present district to be greatly reduced which would release the necessary working capital to enable you to transact business in another field.

In connection with Pumping equipment and Casing—I trust you will not consider this branch of the

(Testimony of B. T. Dyer.)

business until we have had time to go over the details very fully. There is no profit in pipe. It ties up a large amount of working capital without a compensating return. The detail in connection with Pumping equipment is considerable, and the expense of handling that class of goods in and out of your warehouse together with the cost of [242] accounting and collecting does not justify your considering that class of business. The styles of Pumping equipment vary, and you would soon have a very large dead stock, which would mean the tying up just that much additional working capital. In other words, the returns on Pumping equipment in my opinion, does not justify your considering it at this time.

Yours very truly,

J. F. LUCEY,
President.

JFL*S.

Cy to Mr. L. E. Doan, Merchants Bldg., Shreveport.

Mr. A. J. Carr, Mason Bldg., Houston, Texas."

Objected to by defendant on ground of being hearsay, incompetent, irrelevant and a self-serving declaration. Offered by plaintiff on ground that copy sent to Doan and because it was brought out on direct examination by defendant that Dyer did not run the North Texas Supply Company satisfactorily. The Court ruled that it would not be evidence against the defendant unless it contained something that would call for a reply from him

(Testimony of B. T. Dyer.)

and that was allowed to go in subject to the objection. Exception noted.

MR. METSON.—“Both the letter and the answer have been shown to the defendant on the stand and he testified he thought he remembered something about them, but was not sure.”

I had a conversation with Doan about the North Texas Supply Company at Fort Worth in May, 1919, with respect to its organization. Captain Lucey and Doan came to my room early in the morning. I don't remember anyone else coming in with them that first time. However, his son may have been there. Lucey first addressed me as President, I think he said, “Get up, President,” and I asked him what he meant; he said he wanted to start a supply store in Wichita Falls, and he and Doan had been discussing it on this trip. He said he wanted me to organize it and run it, [243] and I told him that I did not care, I did not want anything to do with it. I said, “Not for me, I am over here in the oil business; I am not a supply man, Captain.” “Well,” he said, “There is a wonderful opportunity up there, and I would like very much to start this store, I cannot start it as a Lucey branch”; then he explained that he had some arrangements with the Continental Supply Company, whereby he could not go in there with a Lucey Branch, and I told him I did not want to go into the Commercial business, that my heart was strictly in the oil game with Doan, and Doan said, “Let me talk to Tom a few minutes, Captain,” and he

(Testimony of B. T. Dyer.)

went out and left us alone. Doan said, "Now, Tom, Captain is very much enthused about putting this store up there, and we have been talking about this, and about the Shreveport, La. game, and that is part of the family affair, and he has agreed if you will go up there and organize this and run it—it is only a temporary affair—that he will go in with us down in the Louisiana property and put up \$50,000 in with us down there; now, there might possibly be a loss, although we do not look for a loss, on the Louisiana lay-out, but the profits that might accrue from this when it is taken over by the Lucey Company, we would have the stock, and if we had a loss in Louisiana they might possibly take up that loss, and it does not make any difference where you are, whether you are at the north pole or south pole, it is a family affair, and our interests are identical, and the captain is very insistent that you do this, and it is going to please him, and I said, "Well, Larry, if that is a part of the game," with a lump in my throat, I said, "I will go out and do my best." He said, "You can go on with your oil business just the same, and it won't be but a short time when the contract with the Continental is off, and Lucey intends to take it [244] over." I said, "All right." We had possibly a fifteen or twenty minute talk. When we got through we went into the Lucey room, and either Doan or myself told Captain that it would be agreeable for me to go in with them and help organize this company; we immediately started that day to start our organiza-

(Testimony of B. T. Dyer.)

tion, and selected who we wanted for directors, and the original stockholders in the charter, and it was understood, Lucey said, that he wanted the control held in trust by Doan, he was selected, because he wanted to take that over, and he did not want the stock scattered all over, where he would have any trouble in controlling or taking it over as soon as he was ready to; he was doing some financing, and intended to take it over shortly; that was the sum of our talk. Later in the day, we were busy gathering the material for the corporation, and gave it to the lawyers, and a lawyer sent a man down to Austin that night, got the charter, and telegraphed up everything was all right, and we immediately started; the next day or two I went on to Wichita Falls and started to look for a location, and it was almost impossible to find. The capitalization was to be \$100,000, with half paid in, at that talk with Captain Lucey. Now, this was the first talk, before Captain Lucey went out of the room. I said, "Captain, I could not go into the supply game and take any stock, because my money, what little I have, is tied up in these leases here." And he said, "You don't need to worry about that, I will carry your subscription for you." A little later on Lucey was in our room, I think it was in our room, and he said, "When you make a success of this, when you make \$100,000, which you ought to make inside of a year, I will see that you get a bonus of 10,000 shares of stock." I talked with Doan about this bonus stock, and it was agreed that this was our joint

(Testimony of B. T. Dyer.)

stock. The idea was, while the little boom was on, we were to [245] get the highest price possible for the goods, and when we got in disfavor, as they called it, for getting high prices, and the little boom had dropped, by that time Lucey would have it arranged to take it over, we would step out and they would step in, and any stockholder that was dissatisfied was to have his stock taken over by Captain Lucey; that was his assurance, that we could tell our stockholders, if they were not satisfied, he would take it over. No definite time was fixed as to when the Lucey Company would take the North Texas over but it was to be within a short time. It was only to be a temporary arrangement. Lucey did not thereafter supply the funds for the stock that was subscribed for by me. I wanted to make good on the stock, so I got Couch to take my subscription over. In the latter part of November, 1919, at San Francisco I told Doan I had met Lucey in St. Louis. I told Mr. Doan that I had told Captain that I had made arrangement to do some work for the American Oil & Engineering Corporation, and that I wanted to know how quick he was going to take over the North Texas, and what his ideas were about it, that after the first of the year I could not give them very much time, and that my business was in the oil business, and I thought that I had fulfilled his wish and Doan's wishes, and he told me I had done remarkably well, and that everything was more than he had anticipated, and he thought I had exceeded what

(Testimony of B. T. Dyer.)

he could do himself, and that he would have somebody that would be mutually agreeable to take it over, and that if they did not take it over by the 1st of the year—it was his hope to have the Lucey Company take it over around the 1st of the year, or shortly thereafter, and for me to go on and look after it like I was doing, and he would give it thought thereafter.

I remember a conversation as to the Lamb tract in the [246] presence of Mr. Doan, Jr., I have no recollection of Mr. Doan, Sr., stating that he had his doubts about the Lamb tract. I did not say that I thought it was a good buy, and should be purchased, in the presence of Mr. Doan, Jr.

With reference to the files, etc., that were in the office that was occupied by Doan and myself in San Francisco, I packed up some files and letters and things out of his desk, and I thought I did a good job and put them in typewriter boxes, putting paper between each layer that came out of his drawer, marked them to L. E. Doan, and my recollection is I shipped them to Shreveport by express. I did not extract one paper from Doan's files. Doan never made any demand on me on the Santa Maria account until the telegram of December, 1919. I had several talks with Mr. Doan, and offered to get the money to pay him; he told me that he was selling off the salvage, and there would not be a great deal of loss to us, and to leave the matter until the salvage money had come in, and when that was all cleared up he would give me the amount, but it

(Testimony of B. T. Dyer.)

would not amount to very much, and he let it run that way, but I made every effort to pay him up, but I had never had a statement from him until that telegram in New York.

I did not have any conversation, or make a request of Mr. Doan in Texas to borrow \$20,000, or in Shreveport to borrow \$20,000 against the Doan Oil Company stock. I did not request Doan to lend me \$30,000. I did not have any conversation with him about buying a piece of land in Oklahoma, a forty-acre tract, and financing it by a loan on the Doan Oil Company stock. Things happened so fast that morning that I did not have time to ask him about any of those things. I went to the *Your* Hotel before Mr. Doan came downstairs, it was too early to call him, I thought, [247] and he came down just a little before 8; he had not been in the dining-room, and I asked how the production was, and he said, "Oh, pretty good," and asked me if I had had my breakfast, and I told him I had. So I walked into the dining room with him and sat down at the table, and I said, "Larry, I want to get that agreement between us as partners fixed up, in case you or I die"; he just looked up and said, "I have decided you have no interest with me." And I said, "What?" He said, "You have not kept your contract, and you have not made a success of the North Texas Supply Company." I said, "Why, look at your statement, you know it is a success." He said, "You are a damned liar." I was pretty sore, and said nobody could call me a damned liar and get

(Testimony of B. T. Dyer.)

away with it, and as I related the other day I jumped up, and I turned around and said, "Is that your answer"? And he said "Absolutely, and I will fight till hell freezes over," and I walked away, and the next day I got a telegram of apology from him. That conversation was in March, 1920. I must have had a conversation with Doan in January, 1920, at Fort Worth. Doan at that time did not tell me I had no interest in Louisiana. He spoke to me about getting the money for the Doan Oil Company for my interest with him in the Doan Oil Company, and he also spoke about a possible sale. As I recall it, I told him if there was going to be a sale I did not want to get this money. I would have to pay interest, or I would have to pay something for getting it, and think I wrote him later on about that. I told him at that time I could finance it. I offered to put the money in, always wanted to put the money in, and I told him that I would get, I could get it from Fleishhacker, I could get it from the American Oil & Engineering Company.

Letter introduced and marked Plaintiff's Exhibit 93. [248]

(Testimony of B. T. Dyer.)

Plaintiff's Exhibit No. 93.

(Letterhead SANDERSON & PORTER.)

"New York, December 18, 1919.

B. T. Dyer, Esq.,
Fort Worth Club,
Fort Worth, Texas.

My dear Mr. Dyer:

Referring to our conversation in the early part of November regarding your Louisiana interest in the Doan Oil Company, I have considered this matter and can assure you that should you wish this loan of \$50,000 I will be able to arrange this for you through our banking connections here, which I am sure will be agreeable to you.

Should you come to the point of wanting this, please advise.

Sincerely yours,

623

SETON PORTER."

I showed the above letter to Doan. I did not buy any water well, although Doan testified that I did. The conversation with Doan was this: I told Doan, or wrote him, Mr. Delaney, a very close friend of mine, had been down in Stevens County, and reported to me that the Mid-Kansas had a fine well, in the northern portion of Stevens County; at the same time I was offered 100 acres just west of this Mid-Kansas well by a broker in Fort Worth. Delaney told me that he thought it was a good buy.

(Testimony of B. T. Dyer.)

I received the first check from the American Oil & Engineering Company in January, 1920. It has been increased since to \$1250. I never received any money before January from that Company.

With reference to Exhibit 56, the words, "good news" are in regard to the Giffin well. [249]

With reference to the Considine-Martin deal, I did all I could and all that was required of me. I got Joe Terry a map, gave him data; and he was in my room several nights until after midnight, getting information about this country. He knew nothing about it. Later on, I got maps again and in San Francisco I helped when I had time to fill in; there were people came to me, and I went to two people and spoke about it, and they took stock in it. They were Dr. Graham and Dr. Hopper. They became members of the Considine-Martin Syndicate.

As to the North Texas Supply Company, the average capital for the year was a little over \$40,000. Lucey told me that they were going to take the property over in 1920. He said they would advance a credit of \$750,000, but they never did. I was in Wichita Falls practically all the time in June, with the exception of a day or two when I would go to Fort Worth, I was getting a place to put our stores, a warehouse—I put in practically all the time in June. The first part of July I came out to California, and tried to buy casing and tool joints, I could not get casing here—I placed a big order for tool joints, of which they did not deliver

(Testimony of B. T. Dyer.)

afterwards but a part of them, but during that time I closed up my house and had an operation on my nose, and went back; but I gave all of that month, and after that I was busy with the North Texas, and did not have a chance to get out to do much oil business, and the organization ran along as smooth as a clock, and made money hand over fist, and we could have sold a world more of goods if we had had them delivered; I started to fight the Lucey Company from the top down to deliver the goods, and the President would pass the buck to some man in Texas, that he had not given me goods, and if they were not going to give me goods he was going to ask us to close [250] the North Texas Supply Company up, and I fought them all the way down, Mr. Doan fought them, and was with me, and said I was right, and by fighting, and fighting, and fighting, we did get some goods, and we made a lot of money.

I transacted business for the North Texas Company in California on that first trip. In August I was in Wichita Falls almost all of the month with the exception of a few days when I ran up to Fort Worth. In September up to the 22d I was in Wichita Falls and Fort Worth. Fort Worth is the center of all the great activities; a great many of the big companies operating Wichita Falls have their head offices in Fort Worth, and everybody goes there to do the big business, to get their money to carry on the big business. That is the center of that section. In September I made a trip to Pitts-

(Testimony of B. T. Dyer.)

burgh, Houston and Chattanooga. Doan said to me, "Why don't you go to Pittsburgh, and Houston and Chattanooga, and perhaps you can get more goods." We were short of deliveries at that time. I made the trip and went to New York. I returned to Wichita Falls in September. In November I made a trip to buy 40 miles of pipe-line, from the Lucey Company or anybody I could get it from for the American Oil & Engineering Company. I was acting for the North Texas Supply Company. I went to Tulsa, St. Louis, Chicago, Pittsburgh, and finally I went to New York. Later, in November, I went to California, and then returned to Wichita Falls. While I was away the North Texas Company was run as follows: I had placed each man in his particular department, and the sales part was run by Mr. Johnson, the buying by Ross, and I had them confer, and every night I would get a night letter covering all of the facts, the bank balance, the collections, and anything of importance that had happened, and I was in touch with them every day; I would get a [251] night letter, and would know exactly what was going on in every respect.

Doan did not tell me in the latter part of April or first part of May, 1919, tell me he was going to operate in Louisiana with Titus and that it would be on an entirely different basis, and that Titus would be interested with him in everything in Louisiana. On or about that time, he did not put it this way, that he would not take me to

(Testimony of B. T. Dyer.)

Louisiana and did not want me down there and that I would not be permitted to go to Louisiana. He wanted me to look after the Texas and Oklahoma end and he would look after the Louisiana end.

Doan never had any such talk with me as follows: "I told Mr. Dyer if he would get his money from the California Syndicate, if he would take 10,000 shares of the stock of the North Texas Supply Company and pay for it, and if he would organize the drilling companies for the North Texas Supply Company and stayed at Wichita Falls and made that his head quarters, and run that business, and devote his whole time to that business, that I would carry him for Louisiana, provided he did those things, it was entirely contingent on his doing those things." The California Syndicate was a little bunch of people out here that indicated they would put in some money if I was going into the oil game, and I went around and saw them and got about \$50,000, and I looked at many different things, and I told Doan all about it, and he was pleased, and I was pleased, and if we could find anything that was good, I was to get a quarter interest, which was our common property, equally divided. I looked at many propositions, but never used that money. I never found a safe place to employ that money.

With respect to the conversation on May 30th about the organization [252] of the North Texas Company, what was said about organizing drilling

(Testimony of B. T. Dyer.)

companies was as follows: There was absolutely no contract made or no definite arrangement made about any drilling company, or any rig-building company. Captain Lucey suggested that it would be a good plan, possibly, to let some contractor have a rig on a 50-50 basis; he mentioned a Mr. Wrenn, and Mr. Edging—he afterwards told me not to let Mr. Wrenn have the rig, he being a poor risk; he said to tell Mr. Edging that he had left the matter entirely in my hands, whether I was to give him a rig, or not. There was a talk later on that they might form a rig-building company out of Lucey's employees, but no contract or no set thing about it at all; it was a general conversation that these things were possible. I did let Mr. Edging have a rig, and it was a failure. The American Oil Company took it over. The first party to be put in charge there was Edging, who was recommended by Lucey. As to the drilling conditions when the North Texas was first organized, there were a great many drilling, and of course you could not get rigs. When our rig did come in, it came straggling along; they came in half completed, evidently; there were great many things short, and after a month or six weeks he got it to going, and then came an embargo, people could drill wells down to the sand, but the Commission would not allow them to bring them in, and that knocked the bottom out of us right there and the contractors commenced to lose money and commenced to fly back to Oklahoma.

(Testimony of B. T. Dyer.)

I do not remember any conversation in July, 1919, in San Francisco with Titus. I did have a conversation with him at his office in the latter part of December, 1919. I telephoned Titus and then went to his office. Mr. Titus told me that my place was right down in Shreveport, with Larry Doan, that he had [253] too much to do, and I told him I quite agreed with him, and he said that he was going back shortly after the holidays, and wanted to know if I would be in the neighborhood around Fort Worth, where he could get hold of me, that he was going to insist that I come down there and work right with Larry, because he had too much to do and he could not handle it all, and two heads were better than one. That was in the latter part of December, 1919.

Cross-examination.

It is correct that when Lucey first spoke to me about the North Texas Company and suggested that I should subscribe and pay for stock that I told him that my money was tied up in leases there. I had a very few thousand dollars tied up in leases. It was about \$5,000. It was tied up in an indirect way, in expenses of going. As to what leases I had in Texas and how much money I had tied up there was the Stevens County leases and I put some money in an automobile that we used. I do not think I can give you any one lease that I had a thousand dollars tied up in at the end of May, 1919. I had money tied up in fees, lawyer's fees. As to any amount that I had tied up in leases, I had

(Testimony of B. T. Dyer.)

\$500 tied up in the Eastland County lease. That money was paid to Olcott. I got it back when it was sold. I had \$500 tied up in that lease in May, 1919. As to whether I had any other money other than this \$500 tied up in any leases at that time I had just a few attorney's fees. One was \$75 and one was \$100. That was all the money I had tied up in leases at the time I talked with Captain Lucey. I had profits and dividends paid to me on the Bosque County leases and on the Stevens County leases and I think I received compensation on other leases from Doan. I got a little over \$2,000 out of the Bosque County lease and I got the Jergens [254] commission, which I divided with Doan, \$750.00 apiece; also the Eastland County lease was \$6400 between us, and the Couch 100 acres, that was \$7000 between us, and the Archer County lease made \$750, which we divided; and the Oklahoma lease, which has not been settled yet. All of those profits had been made out of operations in Texas from August, 1918, to the end of May 1919. All the letters and telegrams from Doan which have been introduced in evidence were received by me at the various points to which they were addressed, California, New York, Chattanooga, Chicago, Pittsburgh and the other points as shown by the telegrams. On my trip to California in July, I was there about three weeks. On Thanksgiving day I was in Los Angeles, and also on Christmas of that year. I think I made three trips to New York from June 1st, 1919, until the

(Testimony of B. T. Dyer.)

end of the year. I came to California in July to get casing. No, they do not make casings in California. I was in pretty close touch with the Lucey Company and we had their purchasing agent at Wichita Falls take care of the purchases. I did not figure that I could order supplies or materials by letter or telegrams as well as by any other means. I figured I could go through the fields and get second-hand casing. I came to California for the purpose of getting second-hand casing and tool joints. Lucey was not delivering it to us.

As to the 40 miles of pipe-line that I said I was selling for the North Texas Company. The American Oil & Engineering Company was going to build a pipe-line for a man named Ulch. I think I first heard of it in October. Mr. Porter of the American Oil Company was very anxious to get it and pipe was very high. I helped him in Wichita Falls, we went around and saw many people there and thought we had it, and there was a person [255] came in to the North Texas Supply Company and said that he could get it. Mr. Porter came to Wichita Falls and wanted the pipe for use in the Burke-Burnett district and I purchased it for the American Oil Company from Stewart & Laughlin through Lucey. It was handled through Lucey's Pittsburgh office. The North Texas Company made no profit on it. The American Oil Company made no profit on the pipe—only on the contract work. The profit accrued to the American Oil Company eventually.

(Testimony of B. T. Dyer.)

In the fall of 1919 the rig that had been sold originally by the North Texas Company to Edging was sold to the American Oil Company. I handled that transaction. Some time later the American Oil Company put the rig in operation. It was not a success and they never got their money from the hole they drilled.

In the letter of Jan. 21st which I addressed to Doan, I stated that I would have to give up a small part of Doan Oil Company stock in order to get this money. The reason of that was that I figured that Mr. Fleishhacker, if I got it from him, which he told me I could, I figured that as a matter of courtesy I would give him a part of it; I was going to give him a piece of it; I figured about a quarter interest. That was what I meant in my letter of January 21st.

The first talk I had with reference to my entering the employ of the American Oil Company was about the first of October. I went to New York and met Mr. Seton, Mr. Porter and Mr. Meredith. We reached no conclusion at that time. I first agreed with them to render services in the latter part of the year. I think it was in November that I encouraged them and settled it in December, when I went there for a meeting. The January check I received was for December services. At our first meeting they spoke of bonus stock. I was to be given that after it had been earned. [256] I got it at par and it was held in escrow.

As to Exhibit No. 83 being a letter from Titus

to Doan, Doan gave me that in Shreveport; I don't recall when.

The following extracts from the deposition of J. F. Lucey offered in evidence on behalf of plaintiff:

Extracts from Deposition of J. F. Lucey.

It would be impossible for me to state what conversations took place in the presence of Mr. Dyer (referring to the conversations at the time the North Texas Supply Company was organized) and what took place when Dyer was not present. I can state what was outlined to Doan before we discussed anything with Dyer and then the arrangement with Dyer was left to Doan to a very large extent. I suggested that Dyer become a stockholder and I gave him more or less the details. As to how he was to subscribe for it and pay for it was left to Doan. We talked about Dyer subscribing to stock, but I cannot state that Dyer ever committed himself to subscribe for any stock, but it was my intention that he should and I expected that he would subscribe for stock in the Company. I remember making the statement that if for any reason Dyer was not in position to immediately pay for his stock we could make arrangements to carry it for him until such time as he could arrange his finances. After the enterprise was launched I gave it very little personal attention, except that Dyer kept constantly communicating with me, to assist him in securing addi-

tional supplies. Dyer communicated with me with reference to severing his connection with the company. He stated the reasons but I cannot recall them at this time. The Lucey Company wanted to establish a branch at Wichita Falls and we wanted a good man to take charge of that territory. I picked out Dyer. It was my suggestion and not Doan's suggestion to me. [257]

Mr. Carr, Mr. Doan and myself visited Wichita Falls. We did not go out in the field. Our manager had been very anxious to establish a branch there, but I did not care to establish a branch in our own company, and in looking over the ground and considering the situation that existed, I felt it would be better to go in there with a subsidiary company, and I first talked over with Mr. Carr the formation of this company, and after he had agreed with me, then I broached the matter to Mr. Doan, suggesting that it would open up a position for his son if he would become identified with that company and that we would make Mr. Dyer the president of the company. The whole scheme of organization was mine, and the selection of not only young Doan, but Mr. Dyer."

At this point the testimony was closed and thereafter the Court made its interlocutory decree on the 18th day of January, 1921, and by that decree ordered that the proceeding be referred to H. M. Wright, Esq., as the Special Master to take and make an account and inquiry as specified in said interlocutory decree.

Pursuant to the order of the Special Master defendant filed a written account which was subsequently amended. The following are the first verified account and the amended verified account of L. E. Doan, omitting the formal parts thereof, verifications, and also omitting the accounts of the Doan Syndicate, which is not material to any of the issues herein presented.

“ACCOUNTS OF L. E. DOAN.

Statement of Assets.

93,000 shares of stock of Doan Oil Company.

15,000 shares of stock of Considine Martin Oil Company. [258]

PARTNERSHIP ACCOUNT OF RECEIPTS AND DISBURSEMENTS.

DEBITS.

93,000 shares of stock of Doan Oil Co.

on hand	\$ 93,000.00
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Dividends received on 93,000 shares of

stock of Doan Oil Company	46,500.00
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Amount of refund on Considine Martin

stock	2,666.66
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Dividend received from Considine Mar-

tin Oil Company	150.00
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TOTAL DEBITS:	\$142,316.66
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CREDITS.

Cash paid for 93,000 shares of stock of Doan Oil Company	\$ 93,000.00
Interest on investment as per attached statement	10,208.05
Amount paid for Considine Martin stock	2,666.66
Loss sustained on Wehr Haywood Syn- dicate:	
Invested	\$1,000.00
Returns thereon	400.00
	<hr/> 600.00
Balance to be accounted for to joint ac- count of B. T. Dyer and L. E. Doan .	35,841.95
	<hr/>
TOTAL CREDITS:	\$142,316.66

STATEMENT OF ACCOUNT BETWEEN B. T.
DYER AND L. E. DOAN.

DEBITS.

Fifty per cent of balance accounted for by L. E. Doan to joint account	\$ 17,920.975
Interest due from L. E. Doan to B. T. Dyer on dividends of Doan Oil Com- pany	1,424.06
	<hr/>
TOTAL DEBITS:	\$ 19,345.035

CREDITS.

Fifty per cent of purchase price paid for

Doan Oil Company stock\$ 46,500.00

Balance due January 1, 1918,

from B. T. Dyer to L. E.

Doan on Doan Syndicate

deal:\$6,000.00

Less cash payment Jan. 21,

1920 3,000.00 3,000.00

Interest on last item to March 1, 1921. 665.00

Amount due from Dyer to Doan in re

Doan Syndicate operations 553.47

Forward: 50,718.47

[259]

Proceeds of sale retained by B. T. Dyer

on Oklahoma lease sale 2,070.00

Total Credits:\$ 52,788.47

Total Credits exceed total Debits by the sum of
\$33,443.435, which represents the net sum due
from B. T. Dyer to L. E. Doan upon an equal
division of the assets.

STATEMENT OF NET INVESTMENT OF L. E. DOAN AND INTEREST DUE L. E. DOAN.

PAYEE.	Date Paid	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
			Yrs.	Mos.	Days	
Clark & Greer	1919 4-10	\$1,000.00	1	10	21	132.42
“	5-19	2,000.00	1	9	12	249.67
Thigpen & Harold	5-17	25.00	1	9	14	632.08
Clark & Greer	“	5,000.00				
Mack Levy	“	22.50				
Barham Drilling Co.	5-23	2,800.00	1	9	8	346.11
Mack Levy	“	7.50				
C. A. Giffen	5-27	150.00	1	9	4	19.34
L. E. Doan, Jr.	“	7.60				
Barham Drilling Co.	5-31	6,000.00	1	9		734.96
S. S. Raymond	6- 1	152.10	1	9		18.57
Texas Map Co.	6- 3	15.00	1	8	28	1.83
Geo. O. Baird	6-17	50,000.00	1	8	14	6,105.73
Barham Drilling Co.	6-19	3,000.00	1	8	12	833.02
C. A. Giffin	“	4,000.00				

PAYEE.	Date Paid	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
	1919		Yrs.	Mos.	Days	
Yoree Hotel	6-25	39.99	1	8	6	4.71
Louis Titus	6-14	14,000.00	1	8	17	1,679.65
Yoree Hotel	6-29	76.92	1	8	2	9.01
Geo. O. Baird	7-15	51,000.00	1	7	16	5,811.33
Globe Lbr. Co.	7-16	2,200.00	1	7	15	250.26
Yoree Hotel	7-23	56.11	1	7	8	6.39
Miss Parish	7-25	4.50	1	7	6	.50
Globe Lumber Co.	7-28	640.00	1	7	3	82.45
W. K. Henderson	"	100.00				
Jennings Tank Co.	7-7	368.00	1	7	25	198.43
Askew	"	1,050.00				
C. A. Giffin	"	300.00				
Yoree Hotel	7-8	48.35	1	7	23	34.20
Underwood	"	247.94				
C. A. Giffin	7-11	1,000.00	1	7	20	143.69
C. A. Giffin	"	127.45				
E. L. Edwards	"	125.00				

PAYEE.	Date Paid	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
			Yrs.	Mos.	Days	
S. S. Raymond	7-15	300.00	1	7	16	40.11
Shreveport Blue Print Co.	7-15	21.50				
Yoree Hotel	"	49.52				
J. B. Stephens	7-30	146.66	1	7	1	16.29
Yoree Hotel	7-29	63.24	1	7	2	7.11
Ice Co.	8- 5	1.55	1	6	26	.28
[260]						
A. W. Gammer	8- 5	1.00				
S. S. Raymond	8- 2	555.35	1	6	29	61.45
"	8- 4	300.00	1	6	27	33.08
W. K. Henderson	8- 5	18.00	1	6	26	.33
Miscellaneous Expenses	8- 6	236.40	1	6	25	102.88
C, A. Giffin	"	700.00				
C. A. Giffin	8- 7	300.00	1	6	24	99.60
C. A. Giffin	"	359.75				
C. A. Giffin	"	246.98				
C. A. Giffin	"	1.50				

PAYEE.	Date Paid	Amount Paid.	Interest computed to March 1, 1921, @ 7%.		
			Yrs.	Mos.	Days
Ice Co.	8- 5	13.00	1	6	26
Telephone	"	18.00			
E. E. Lemond	"	2,784.11			
Lucy Mfg. Corp'n.	8- 7	50.77	1	6	24
Yoree Hotel	8- 6	20.50	1	6	25
Oil City Iron Works	"	4,170.88			
Keith Motor Co.	8-10	901.25	1	6	21
Miss Kennedy	8-15	55.00	1	6	16
W. K. Henderson	8-13	2,187.00	1	6	18
Yoree Hotel	"	69.43			
K. Lockett	"	2.75			
J. B. Stephens	8-15	100.00	1	6	16
Milo Drilling Co.	8-16	2,000.00	1	6	15
Blue Print Co.	8-15	3.00	1	6	16
Chamber of Commerce	"	12.50			
Telephone	"	6.70			
E. L. Edwards	"	4.50			

B. T. Dyer.

PAYEE.	Date Paid	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
			Yrs.	Mos.	Days	
K. C. S. Railway	8-21	259.46	1	6	10	27.16
Petty Cash	8-22	25.00	1	6	9	2.67
J. B. Robinson	8-15	2.50	1	6	16	.27
J. E. Underwood	8-20	228.48	1	6	10	24.43
Gas Company	8-22	65.29	1	6	9	12.94
Youree Hotel	"	52.45				
Telephone	"	3.50				
Price Waterhouse Co.	8-16	194.70	1	6	15	21.01
Querbes and Bourquin	8-22	87.00	1	6	9	9.29
S. S. Raymond	8-26	194.80	1	6	5	17.49
Hotel Company	8-27	50.00	1	6	4	5.29
Telegram—1st Nat. Bank	8-24	1.30	1	6	17	.14
P. C. Doggett	8-15	25.00	1	6	16	2.70
Barham Drilling Co.	8-21	346.50	1	6	10	37.05
Gulf Co.	8-26	14.00	1	6	5	6.55
L. J. Munn	"	20.12				
P. Lee	"	19.12				

PAYEE.	Date Paid	Amount Paid	Interest computed to Mar. 1, 1921, at 7%		
			Yrs.	Mos.	Days
W. H. Brown	1919	5.00			Interest
J. C. Allen	"	3.50			
Merchants Building Co.	9- 1	39.50	1	6	4.15
Western Union	8- 5	47.12	1	6	197.27
J. L. Keenan	"	250.00			
C. A. Giffin	"	500.00			
[261]					
W. G. Ray	8- 5	500.00			
C. A. Giffin	"	300.00			
Mrs. Kennedy	"	55.00			
J. B. Stephens	"	100.00			
Cash—L. E. Doan's	12-19	5,000.00	1	2	420.01
"	12-31	10,000.00	1	2	816.69
Oklahoma Lease	5-10	8,060.00	1	9	1,020.33
Leonard Lease	5-19	10,000.00	1	9	5,118.31
Burkburnett Lease	"	30,000.00			

PAYEE.	Date Paid	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
			Yrs.	Mos.	Days	
Comanche County Lease		1,000.00				
47 Acre Lease	5-23	500.00	1	9	8	62.02
"	5-27	3,047.50	1	9	4	375.70
Cash	7-15	10,000.00	1	7	16	1,139.48
Burkburnett Lease	5- 5	10,000.00	1	9	26	1,275.59
Bull Bayou Lease	6-10	3,000.52	1	8	21	362.32
Cash	9- 1	48,738.53	1	6		5,117.69
Automobile		2,665.00				
		<u>\$306,665.70</u>				<u>35,093.96</u>

PAYOR—SOURCE

Oklahoma Lease Sale	5-15	3,530.00	1	9	16	443.18
"	6-10	5,387.50	1	8	21	650.56
Louis Titus	5-23	10,000.00	1	9	8	1,240.59
"	5-27	10,000.00	1	9	4	1,232.82

		Interest computed to March 1, 1921, @ 7%.					
Date		Amount	Yrs.	Mos.	Days	Interest	
Paid		Paid.					
1919							
4- 1	"	10,000.00	1	11		1,341.71	
4- 6	"	10,000.00	1	10	25	1,331.99	
6-19	"	25,000.00	1	8	12	2,975.09	
6-27	"	15,000.00	1	8	4	1,761.72	
7-15	"	20,000.00	1	7	16	2,278.95	
7-22	"	10,000.00	1	7	9	1,125.87	
8-12	"	20,000.00	1	6	19	2,173.95	
6-19	J. F. Lucy	25,000.00	1	8	12	2,975.09	
6-15	J. F. Lucy	24,670.00	1	8	16	2,954.90	
12-31	R. E. Doan	5,000.00	1	2		1,225.04	
"	C. E. Doan	5,000.00					
"	H. A. Doan	2,500.00					
"	N. E. Doan	2,500.00					
6-27	L. E. Doan, Jr.	10,000.00	1	8	4	1,174.45	
		<u>\$213,587.50</u>				<u>24,885.91</u>	
BALANCES		<u>93,078.20</u>				<u>10,208.05</u>	

BALANCES

B. T. Dyer.

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AMENDED ACCOUNT OF L. E. DOAN.

Statement of Assets.

93,000 shares of stock of Doan Oil Company.
 15,000 shares of stock of Considine Martin Oil
 Company. [262]

PARTNERSHIP ACCOUNT OF RECEIPTS
AND DISBURSEMENTS.

DEBITS.

93,000 shares of stock of Doan Oil Co.	
on hand	\$ 93,000.00
Dividends received on 93,000 shares of	
stock of Doan Oil Company.....	46,500.00
Amount of refund on Considine Martin	
stock	2,666.66
Dividend received from Considine Mar-	
tin Oil Company.....	150.00
	<hr/>
TOTAL DEBITS.....	\$142,316.66

CREDITS.

Cash paid for 93,000 shares of stock of	
Doan Oil Company.....	\$ 93,000.00
Interest on investment as per attached	
statement	9,149.30
Amount paid for Considine Martin stock	2,666.66
Loss sustained on Wehr Hay-	
wood Syndicate 3-30-19 In-	
vested	\$1000.00
Returns thereon.....	400.00 600.00
	<hr/>

Balance to be accounted for to joint ac-
count of B. T. Dyer and L. E. Doan 36,900.70

TOTAL CREDITS.....\$142,316.66

STATEMENT OF ACCOUNT BETWEEN
B. T. DYER AND L. E. DOAN.

DEBITS.

Fifty per cent of balance accounted for
by L. E. Doan to joint account.....\$ 18,450.35
Interest due from L. E. Doan to B. T.
Dyer on dividends of Doan Oil Com-
pany 1,424.06

TOTAL DEBITS.....\$ 19,874.41

CREDITS.

Fifty per cent of purchase price paid for
Doan Oil Company stock.....\$ 46,500.00
Balance due January 1, 1918,
from B. T. Dyer to L. E.
Doan on Doan Syndicate
deal\$6000.00
Less cash payment Jan. 21, 1920 3000.00 3,000.00

Interest on \$6,000 from
1-1-18 to 1-21-20...\$ 863.33
Interest on \$3,000 from
1-21-20 to 3-1-21... 233.33

\$1096.66 1,096.66

Forward.....\$ 50,596.66

Forward.....	\$ 50,596.66
Amount due from Dyer to Doan in re Doan Syndicate operations.....	553.47
Proceeds of sale retained by B. T. Dyer on Oklahoma lease sale.....	2,070.00
<hr/>	
TOTAL CREDITS....	\$ 53,220.13

Total credits exceed total debits by the sum of \$33,345.72, which represents the net sum due from B. T. Dyer to L. E. Doan upon an equal division of the assets.

PAYMENTS MADE BY L. E. DOAN AS TRUSTEE FOR DOAN, TITUS AND LUCY, PRIOR
TO SEPT. 1, 1919,—SUBSEQUENTLY RATIFIED BY AND TAKEN INTO ACCOUNTS
OF DOAN OIL COMPANY.

Checks drawn on 1st Nat'l Bank
of Fort Worth.

Date Paid	Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%			Interest
			Yrs.	Mos.	Days	
Apr. 10	Clark & Greer	\$1,000.00	1	10	21	\$ 132.42
May 5	Burk Burnett Lease	10,000.00	1	9	26	1,275.56
" 10	Oklahoma Lease	8,060.00	1	9	21	1,020.29
" 17	Clark & Greer	2,000.00	1	9	14	1,508.62
" 17	Thigpen & Herrold	25.00				
" 17	Jno. McAlvey	22.50				
" 17	Leonard Lease	10,000.00				
" 19	Burk Burnett Lease	30,000.00	1	9	12	3,745.00
" 22	Camanche Lease	1,000.00	1	9	19	124.25
" 23	Clark & Greer	5,000.00	1	9	8	1,030.60

B. T. Dyer.

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Date Paid	Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%		
			Yrs.	Mos.	Days
1919					Interest
" 23	Barham Drilling Co	2,800.00			
" 23	47 Acre Lease	500.00			
" 23	Shreveport Blue Print Co.	7.50			
" 27	Advertising	7.60	1	9	4 .94
" 31	47 Acre Lease	3,047.50	1	9	— 1,127.67
" 31	C. A. Giffen	150.00			
" 31	Barham Drilling Co.	6,000.00			
June 1	S. S. Raymond	152.10	1	9	— 18.64
" 3	Texas Map Co.	15.00	1	8	28 1.83
" 10	C. A. Giffen	3,000.53	1	8	21 362.32
Checks drawn on 1st Nat'l Bank of Shreveport.					
1919					
June 17	G. O. Baird	50,000.00	1	8	14 5,969.45
" 19	Barham Drilling Co.	3,000.00	1	8	12 832.99

Date		Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%		
Paid	1919			Yrs.	Mos.	Days Interest
"	19	Chas. Giffen	4,000.00			
"	25	Youree Hotel	39.99	1	8	6 1,654.38
"	25	Louis Titus	14,000.00			
July	3	Youree Hotel	76.92	1	7	28 8.94
July	7	Jennings Tank Co.	368.00	1	7	24 198.43
"	7	J. H. Askew	1,050.00			
"	7	Chas. Giffen	300.00			
July	8	Shreveport Hotel Co.	48.35	1	7	23 34.17
"	8	J. E. Underwood	247.94			
"	11	Chas. A. Giffin	127.45	1	7	20 143.69
"	11	Chas. A. Giffin	1,000.00			
[264]						
July	11	E. L. Edwards	\$ 125.00			
"	15	S. S. Raymond	300.00	1	7	16 \$5,853.44
"	15	Geo. C. Baird	51,000.00			

B. T. Dyer.

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Date	Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%			Interest
			Yrs.	Mos.	Days	
1919						
" 15	Shreveport Blue Print Co.	21.50				
" 15	Shreveport Hotel Co.	49.52				
" 16	Bull Bayou Acreage	2,200.00	1	7	15	250.26
" 23	Shreveport Hotel Co.	56.11	1	7	8	6.32
" 25	Parelle Parish	4.50	1	7	6	.50
" 28	Bull Bayou	640.00	1	7	3	82.45
" 28	W. K. Henderson	100.00				
" 30	J. B. Stevens	146.66	1	7	1	24.44
" 30	Shreveport Hotel Co.	63.24				
" 30	Telegram (Bank chg.)	1.30				
Aug. 2	S. S. Raymond	555.35	1	6	29	61.45
" 4	S. S. Raymond	300.00	1	6	27	33.08
" 5	Consumers Ice Co.	1.55	1	6	26	11.02
" 5	A. W. Gammer	1.00				
" 5	Shreveport Ice Co.	1.50				

Date Paid	Payee	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
			Yrs.	Mos.	Days	
1919						
"	5 E. E. Lemond	18.00				
"	5 Western Union	47.12				
"	5 W. K. Henderson	18.00				
"	5 Cumberland Telephone Co.	13.00				
"	6 Shreveport Hotel Co.	50.77	1	6	25	489.76
"	6 L. E. Doan Expenses	236.40				
"	6 Oil Well Supply Co.	4,170.88				
"	7 Chas. A. Giffin	359.75	1	6	24	511.16
"	7 Chas. A. Giffin	700.00				
"	7 Chas. A. Giffin	300.00				
"	7 Chas. A. Giffin	246.78				
"	7 Lucy Mfg. Corp'n. of Texas	2,784.11				
"	7 Oil City Iron Works	20.50				
"	7 J. L. Keenan	250.00				
"	10 Wm. D. Keith Motors Co.	901.25	1	6	21	98.34
						335

B. T. Dyer.

Date Paid	Payee	Amount Paid.	Interest computed to March 1, 1921, @ 7%.			Interest
			Yrs.	Mos.	Days	
1919			1	6	18	245.12
" 13	W. K. Henderson	2,187.00				
" 13	Kute Lockett	2.75				
" 13	Shreveport Hotel Co.	69.43				
" 15	Mrs. W. Kennedy	55.00	1	6	16	22.60
" 15	J. B. Stevens	100.00				
" 15	E. L. Edwards	4.50				
" 15	Shreveport Blue Print Co.	3.00				
" 15	Cumberland Tel. Co.	6.70..				
" 15	J. B. Robinson	2.50				
" 15	Shreveport Chamber Commerce	12.50				
" 15	P. E. Doggett	25.00				
" 16	Milo Drilling Co.	2,000.00	1	6	15	236.85
" 16	Price Waterhouse Co.	194.70				
" 20	J. E. Underwood	228.48	1	6	11	24.48
" 21	Agt. K. C. S. Ry.	259.46	1	6	10	64.79

Date	Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%		
			Yrs.	Mos.	Days
1919					Interest
" 21	Barham Drilling Co.	346.50			
" 22	Shreveport Hotel Co.	52.45	1	6	9
" 22	Suertes & Bourquin	87.00			24.90
" 22	S. W. Gas & Elec. Co.	65.29			
" 22	Petty Cash	25.00			
" 22	Cumberland Telephone Co.	3.50			
" 26	S. S. Raymond	194.80	1	6	5
" 26	J. C. Holly	3.50			27.20
" 26	W. H. Brown	5.00			
" 26	P. Lee	19.12			
" 26	L. J. Munn	20.12			
" 26	Gulf Refining Co.	14.00			

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Date Paid	Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%			Interest
			Yrs.	Mos.	Days	
1919						
Aug. 27	Shreveport Hotel Co.	\$50.00	1	6	4	5.29
" 29	Chas. A. Giffin	500.00	1	6	2	52.69
" 30	J. B. Stephens	100.00	1	6	1	100.46
" 30	Mrs. W. Kennedy	55.00				
" 30	C. A. Griffin	300.00				
" 30	W. G. Ray	500.00				
Sept. 1	Merchants Bldg. Co.	39.50	1	6	—	4.15

RECEIPTS OF L. E. DOAN, TRUSTEE FOR DOAN, TITUS AND LUCY, PRIOR TO SEPT.
1, 1919, SUBSEQUENTLY TAKEN INTO ACCOUNTS OF DOAN OIL COMPANY.

Deposited in 1st Nat'l of
Fort Worth.

Date Paid	Payee	Amount Paid	Interest computed to Mar. 1, 1921, at 7%			Interest
			Yrs.	Mos.	Days	
Apr. 1	Louis Titus	\$10,000.00	1	11	—	\$1,341.71
" 6	" "	10,000.00	1	10	25	1,331.99
" 22	Gatch & Morris	5,000.00	1	10	9	650.42
May 15	1/2 Int. in sale of Oklahoma Lease	3,530.00	1	9	16	443.40
" 23	Louis Titus	10,000.00	1	9	8	1,240.59
" 27	" "	10,000.00	1	9	4	1,232.82
June 10	Oklahoma Lease	5,387.50	1	8	21	650.56

Deposited in 1st Nat'l. Bank of Shreveport.		Amount Paid	Interest computed to Mar. 1, 1921, at 7%			Interest
			Yrs.	Mos.	Days	
1919						
June 17	Louis Titus	25,000.00	1	8	14	5,969.45
" 17	J. F. Lucy	25,000.00				
" 19	L. E. Doan, Jr.	10,000.00	1	8	12	1,190.01
" 27	Louis Titus	15,000.00	1	8	4	1,761.67
July 15	" "	20,000.00	1	7	16	2,278.89
" 15	J. F. Lucy	24,670.00	1	7	16	2,811.01
" 22	Louis Titus	10,000.00	1	7	9	1,125.83
Aug. 12	" "	20,000.00	1	6	19	2,173.89
Dec. 31	R. E. Doan	5,000.00	1	2	—	1,225.00
" 31	C. E. Doan	5,000.00				
" 31	H. A. Doan	2,500.00				
" 31	N. E. Doan	2,500.00				
Total Receipts		\$218,587.50				\$25,427.24

Thereupon, the following proceedings were had before the Special Master:

Testimony of L. E. Doan, for Plaintiff.

L. E. DOAN, called as a witness for the plaintiff, testified as follows:

My account was prepared by myself and by my bookkeeper, the bookkeeper of the Doan Oil Company, J. B. Stephens. He is at Shreveport. The account was typewritten here in San Francisco and verified by an accountant here. At Shreveport we had the assistance of a certified accountant, Mr. Maguire. I made up the account from my personal books, check-books and stub-books and books of the Doan Oil Company and also from my cash-book. I have them all here, including the cash-book. That is a personal book which I have kept for years. I have no partnership books whatever, because I never knew there was a partnership. The only book I have is that, the personal cash-book which I have in San Francisco. The Doan syndicate deal referred to in this account refers to the Santa Maria properties referred to on the trial. I delivered to Dyer an accounting of the Santa Maria property several months ago, I think before this suit was started. It was a statement made up by Maguire and was a summary taken from the books as kept by McLean. I didn't give Dyer an itemized statement of the Santa Maria operations, that is, the receipts and disbursements. My account has an item of \$553.47 which is additional to the \$6,000 referring to the Santa Maria properties. That was one-fifth of the balance after wrecking the

(Testimony of L. E. Doan.)

property and paying all the bills. I don't recollect the amount of my original subscription to the Doan Oil Company. I think there was three hundred thousand shares in the first capitalization and I subscribed to one-third of it. I do not remember exactly how the stock was issued. Thegpen was the attorney for the Doan Oil. Raymond was employed by it as a geologist. They were original subscribers, I think, each for [268] one thousand shares, issued to them to qualify them as directors. They purchased the stock and paid for it, but the money was paid back to them. The stock issued to them would belong to me. I held one hundred thousand shares, I believe, at the outside.

When I prepared this account I was purporting to state fully therein the total number of shares of the Doan Oil Company that had been issued to me, or the number I own to-day. I was attempting to show the number of shares of stock that would be owned by the firm of Doan & Dyer, provided the Court sustains the judgment, that is all. I was trying to show the partnership amount. By the item "Statement of Assets 93,000 shares of stock of the Doan Oil Company, I mean I put in \$93,000 in cash for \$93,000 shares. I turned in salary for the other 7,000 shares. The Doan Oil Company voted me a salary of \$7,000 back salary for services rendered. I do not remember the date of that. I am not certain that the minutes state anything about back salary, but Titus agreed with me that I would draw a salary from the time I started operations, which was several months before the Company was

(Testimony of L. E. Doan.)

organized. That first came up at a meeting at Shreveport when Lucey and Titus were present. I do not remember the month. It was 1919. I have the book of the Doan Oil Company here. The work I did before the organization of the Doan Oil Company was acquiring properties, leases, etc.; some of them were turned over to the Doan Oil Company and some of them are still standing in my name as Trustee. They all belong to the Doan Oil Company. The Company has a record of all the properties that they own, as is shown by their books. The Company has on file a letter from me stating that I am trustee of those properties. [269]

The only consideration I received from the Doan Oil Company was paid me in stock, just what the properties cost—stock at par. The Doan Oil Co. books will show the amount of stock issued to me in consideration of my turning over these leases and properties. Before the Doan Oil Company was organized Titus had sent me money and also Lucey and I carried that in my account as trustee for the three of us. When the Doan Oil Company was organized all prior transactions were transferred to the Company and there was a big balance of money in my hands, more than my individual share, and stock was issued for that money and part of that was issued to Titus and part to Lucey and part to myself, so that I did not get all of the stock that was issued as the result of the properties that I held at that time. The 93,000 shares include a part

(Testimony of L. E. Doan.)

of the stock was *was* issued against leases. The stock was issued to me and to Lucey and to Titus according to our *pro rata* share of the net amount of money that was turned over. I could not say the proportions of the stock issued without reference to the books. Each one of us was to receive stock in proportion to the amount of money we had invested at that time. The Burke-Burnett property was turned over to the Doan Oil Company at \$40,000, and for that the company issued \$40,000 worth of stock at par. Some of the money I put into that property belonged to Lucey and Titus, but they got stock for that. I did not lose anything on it.

My salary from the Doan Oil Company was \$1,000 a month. My account does not include items of expense in connection with the Doan Oil Company properties. Every item in my account I was given credit for by the Doan Oil Company. They issued stock for it. The 93,000 shares is all the stock I ever received from the Doan Oil Company except the \$7,000 I testified to from my [270] personal salary. I have that in stock, yes. That was issued to me at the same time as the other stock. The statement of issues of stock for the Doan Oil Company prepared by Mr. Stephens and now shown me is, I believe, correct. The first three items are as follows:

L. E. Doan, Certificate No. 1, 50,000 shares, June 27, 1919;

L. E. Doan, Certificate No. 2, 25,000 shares, June 27th, 1919;

(Testimony of L. E. Doan.)

L. E. Doan, Certificate No. 3, 23,000 shares, June 27th, 1919.

I think those 98,000 shares were issued at that time. I think the list is correct. Also on this statement is the name Thegpen, certificate No. 9, 1,000 shares, **on the same date**, and also S. S. Raymond, Certificate No. 10, 1,000 shares on the same date. Those 2,000 shares of stock were also mine. That would be one hundred thousand shares issued and belonging to me on the 27th day of June, 1919.

The resolution fixing my salary at \$1,000 a month was not adopted until some months after the organization of the Company, but I had already paid for this stock in cash and it was simply a matter of bookkeeping, and I assumed I had the right to take 7,000 shares of stock from my own salary for my own use in case the judgment was affirmed. The Doan Oil Company never paid me interest on the balance which I paid out in connection with the acquisition of those properties. It is not a fact that I agreed with Dyer that we would each put in a two months' expense account to the Doan Oil Company at \$500 a month. Dyer sent me such a statement. I told Dyer to make up a statement [271] showing the actual expenses he was out in connection with the properties he acquired and which the Doan Oil Company took over. He sent me down a statement for \$500 without itemizing it. I think it was two months.

The automobile I turned over to the Doan Oil Company and they gave me credit for the full

(Testimony of L. E. Doan.)

amount. The \$2,000.00 covered there on behalf of the owner of the automobile was turned in to the Doan Oil Company.

When I turned the whole thing over to the Doan Oil Company as a corporation there was \$93,000 net balance as the net amount of money I had paid into the Doan Oil Company in cash. I got a hundred thousand shares, but that included \$7,000 salary. The \$93,000 represented my net cash investment in the Company.

The Considine-Martin Oil Company—there were 30,000 shares originally issued to me of which 15,000 shares belonged to J. E. Terry. That 15,000 shares were turned over to him and transferred to him. I do not know whether it has been transferred on the books of the Company, but I know that I gave him all the certificates for his 15,000 shares, but I still have 15,000. It is not a fact that but 10,000 belonged to Mr. Terry. As to any writing between Mr. Terry and myself evidencing our respective ownerships, I think I have a letter, but Terry is here and you can have him testify, if you want him. I believe I have a memorandum signed by Terry in which I advanced \$2,666.99. He gave me his note for half of that. I agreed to turn over half the stock which I acquired from the Considine-Martin Oil Co. when I acquired that note and he paid it back to me. As to the amount of refund, to wit, \$2,666.66, when the company was financed they paid back the original promoters and I got that back. I got a refund on the amount of stock against

(Testimony of L. E. Doan.)

me, but I put up the money in the first place. I got it back from the Company. Terry came to me one day and told me he would like me to advance him \$2,666.66 to go into the Considine-Marine Oil Company. He explained to me what it was. I told him all right. He said [272] "I will give you half of the stock that I get in the Company if you will advance me \$2,666.-66," and he paid me back half of the money. He paid me back half of the money and the stock was eventually issued, 30,000, all in my name, and I turned over half the shares to him. I did not return all the money I received because I put up the money. Terry agreed to pay me the money, to wit, half of \$2,666.66, in the event I did not get it back but if I did get it back it squared the account with him. I got the money back that Terry owed me and the debt was cancelled. He did not personally pay me back any money on the Considine-Martin stock. All the money I got was the \$2600 from the Company. I put the money up in the first place and I got it back. I now have 15,000 shares of Considine-Martin stock. I have never transferred a share of it. It still stands in my name on the records of the Company. I never owned any other shares of stock in that Company.

I remember a resolution being adopted by the Board of Directors of the Doan Oil Company in November, 1919, providing in substance that the Company offer for sale one hundred thousand Shares of stock at par, or one dollar a share, payable on

(Testimony of L. E. Doan.)

certain terms described in the resolution, the stock to be first offered to the stockholders. 50,000 shares would be offered to Titus, 333,333 to L. E. Doan, 16,666 to Lucey. If any stockholder failed to take up such stock the Board of Directors would decide without further action what would be taken with reference to the disposition of it. Those shares of stock were not issued to or taken up by the persons named. Titus took some of his, 50,000 shares, and has some of it transferred to other parties; Lucey the same. I do not know whether I did or not take any part of the 33,000 shares, but I know that I never had any more [273] than the number of shares I have already mentioned. I think I took some of the stock—I sold some of it. That is, I didn't have the money to put up for it, so Morris put up \$5,000, my sisters \$5,000, my brother \$5,000 and my nephew \$5,000. That is the way the stock was divided up. I think the entire lot of 33,000 shares was issued to my nominees. They were not all relatives of mine. S. S. Raymond got 10,000 shares. He paid for his own stock in his own money. I had no understanding or agreement from him about taking that stock over from him. My brother and sisters and nephew took 15,000 shares. The names of my sisters are H. A. Doan and Mary Elizabeth Doan. Each got 2500 shares. R. E. Doan is a nephew of mine. He got five thousand shares. He paid for them, I didn't advance a cent. I had no understanding or agreement whatever with him that I am to get

(Testimony of L. E. Doan.)

that stock or any part of it. C. E. Doan is my brother. He got 5,000 shares and paid for it and the stock was issued to him. My sisters paid for their own stock. L. E. Doan, Jr., is my son. I advanced \$10,000 to him out of my personal fortune and gave him 10,000 shares of stock. I think that 10,000 shares was transferred to him about the time this other stock was issued. I think it was originally issued to me and then transferred. I told my son that I was going to give it to him. The stock was issued to me and I didn't take it until sometime afterwards. I had in mind giving it to him when we first organized the Doan Oil Company.

The Doan Oil Company stock at that time, November, 1919, had no market value. There never has been any market value. There was never any stock sold that I know anything about. I have never fixed a value on the stock of the Doan Oil Company. At that time I don't think it was worth any more [274] than par. Of course it had a speculative value, but not an actual value because the property had not been developed. Like all oil properties the Doan Oil Company's stock has always been speculative, and it is, even at this time because we have not completed the drilling of the wells that may determine the value of the property. You never know the value of an oil company until the drilling is complete. We are drilling wells now on the Pine Island property. If they are failures the stock will not be worth much, but if

(Testimony of L. E. Doan.)

they are successful the stock will be worth a lot of money. My son never sold any stock issued to him in the Doan Oil Company. I don't know of any stock ever having been sold. My son didn't pay for the stock that was issued to him. It was my own money. The Doan Oil Company has had transactions with the General Petroleum Company. It had an option to purchase the Pine Island property. An option from Titus and myself personally to purchase some stock. That was personal stock of myself and Titus. Lucey is not concerned in that. It is all one option. Titus and I personally signed the option and guaranteed the delivery of the stock. Titus and I will be personally obligated to deliver our stock if the option is exercised. The option was some time in April of last year (1920). The General Petroleum Company paid both money and stock for that option. They paid \$50,000 in money, which was paid to Titus and myself. Out of *that* I received altogether \$12,500, Titus got the rest. I don't know, but I think he divided up *pro rata* with the stockholders, to whom he had transferred some of the stock. That did not include myself. Titus told me at the time the money was paid that under his construction of this contract, we didn't have to pay any of this money to the stockholders because he and I were personally guaranteeing the delivery of this stock. [275] Titus and I guaranteed to deliver 200,000 shares of stock of the Doan Oil Company to the General Petroleum Company. I had no agreement as to how much of this stock

(Testimony of L. E. Doan.)

each was to put up. The \$12,500 that I received was based upon the proportion of stock that I own. That is, one-quarter. At that time I considered that I owned 100,000 shares of the Doan Oil Company, and that was one-quarter of the issued stock. My brothers and sisters got some of this \$50,000—everybody got some of it. The General Petroleum Company paid 1,000 shares of General Petroleum stock on this option. It was transferred to Titus and myself. It was 1,000 shares of the par value of \$100 that was taken over at the price of \$200 a share. I got one-quarter of that stock, or 250 shares. The \$50,000 and the 100,000 shares of stock are to be forfeited if the General Petroleum does not exercise its option. If it exercises its option, it pays a total of \$2,000,000 of the book value of their stock. In other words, an additional sum of \$1,750,000. They are to pay that in cash or stock, at their option. That goes to the parties who deliver the 200,000 shares of stock. Titus and I agreed to deliver that stock. The stock on which the General Petroleum Company has an option has not been escrowed. We have merely guaranteed delivery, and they have taken our word for it. I have given Dyer no credit for any portion of that \$12,500 in my account. The quarter of that stock has been transferred into my name on the books of the General Petroleum Company. I have given Dyer no credit for any part of that stock. So far as I know, all the stockholders got a *pro rata* share of the General Petroleum stock, although

(Testimony of L. E. Doan.)

as I say, Titus took the position as a lawyer, that we were under no obligation to do it under the contract. I was entitled to 250 shares of the [276] General Petroleum stock, but 248 shares were issued to me in order to adjust the balance between Titus and myself. I sold him two shares of this stock at the market price, I think it was \$130.00 or \$134.00. 248 shares now stand in my name. I also received \$12,500 in cash. The Doan Oil Company had a subsidiary corporation, called the Ray Drilling Company. I owned no stock in that company; it belongs to the Doan Oil Company.

There were no agreements whatever between Lucey, Titus and myself with reference to the allotment of stock in the Doan Oil Company. I have charged interest in my account on all the amount of money I have put in and I have given credit for all other amounts which I have received from Titus and Lucey and other sources, etc., outside of my own, so that the difference represents the net amount of interest that is chargeable to Dyer.

The General Petroleum option is all covered in one document. It had an option either to buy 200,000 shares of stock of the Doan Oil Company, or in lieu thereof to purchase the so-called Pine Island property. 200,000 shares would represent half of the issued stock of the Doan Company. We have no agreement with other stockholders of the Doan Oil Company that if the General Petroleum elects to take the stock, that they are to contribute from their holdings. We have from a few,

(Testimony of L. E. Doan.)

I don't know how many it is, just a verbal talk, no contract. This verbal talk extended to Lucey, also to my brother and sisters. I don't know whether I mentioned it to them, but they know about this option. There is no contract with anybody, we simply distributed some of the money to these stockholders and wrote them and told them what the agreement was, but nobody was pledged. They could dispose of their stock and get rid of it, and Titus [277] and I would have to deliver the stock just the same. Titus and I hold at present 200,000 shares of stock. I hold 100,000 shares and Titus either personally or by the East Side Investment Company, holds, 173,500.

Certificates 12, 13, 14 and 15, for Doan Oil Company's stock, aggregating 23,000 shares, issued to me under date of December 2d, 1919, were in place of certificates for 23,000 shares which was cancelled. There is an item in my account December, 1919, "Cash L. E. Doan, \$5000." That is \$5,000 that I put into the Doan Oil Company—that was \$5,000 that was sent to me by my brother and sisters. There was \$15,000 which was sent to me at that time, for the stock that was issued to them. I deposited the amount to my account and issued a check to the Doan Oil Company. That was to purchase stock for my brother and sisters. They sent me \$15,000 at that time. They sent it to buy stock for them. The stock was issued directly to them. At the time the stock was issued to my brother and sisters, I had not loaned or advanced any money,

(Testimony of L. E. Doan.)

to any of them. At that time none of them owed me any money. Subsequent to that, I have had no financial transactions with them whatsoever. The stock still stands in their names. They were my nominees. I think I suggested to them that they take this stock. I don't recollect whether I wrote them about it, or whether I talked to them about it when I was in California. They were anxious to put the money in, and I didn't have the money myself, so I took their money. In fact, I borrowed quite a lot of money I put into the Doan Oil Company myself. I didn't borrow any of the money I put into their stock. The money I borrowed for myself I borrowed from banks. I did not borrow any money from them, I borrowed it from outside. They are [278] residents of Stockton, California. I cannot tell you exactly when I first took up with them the taking of this stock, it was some time during 1919, a little before the stock was put up. I told them I thought they could get some of the stock. When the issue was definitely provided for, I notified them that the stock was available. I think I wrote them with reference to it. I had a letter from my brother enclosing the checks. This is a copy of it, which my brother handed me the day before yesterday. It refers to telegrams being received. I presume I wired them that the stock was available at that time. I will secure the originals of the correspondence. My brother Charles resides in Stockton. He is official Court Reporter there. My brother and sisters bought

(Testimony of L. E. Doan.)

the stock and paid for it just the same as I paid for mine. There is no contract to sell it back to me or anything of that kind, it absolutely belongs to them. It is also true of all other relatives who got any of this stock.

I did not notify Dyer at the time this stock was issued, that he could get any of it. Dyer already owed me a lot of money and I didn't consider he had any interest in it whatever. I don't consider him my partner. I didn't put him in touch about it, nor attempt to do so.

The resolution of the Board of Directors provided that I be entitled to 33,333 shares of that 100,000 shares provided for at that meeting. All of the 33,333 shares were issued. My brother and sisters got \$15,000 worth—that would be 15,000 shares. S. S. Raymond got a portion of it, I think 3,333 shares. Morris and his partner got 5,000 shares between them. Morris was Vice-President of the Central National Bank at Oakland. Morris is now dead. His partner's name is Gatch. They each got 2500 shares. They sent me the money April 19, 1919, [279] I don't know who got the other 10,000. The books will show. Raymond, our geologist, got 10,000 shares, a part of which would come out of my allotment. Gatch and Morris sent me the money and I put it into the Doan Oil Company.

Plaintiff hereupon introduced in evidence a statement under the signature of J. P. Stephens, Secretary of the Doan Oil Company, under date of November 18th, 1920, which is as follows:

(Testimony of L. E. Doan.)

“Following are the names of the original organizers of the Doan Oil Company, Inc., together with the amounts contributed to the original capital of the corporation, which sums were paid in cash; no property or other assets were turned over to the Doan Oil Company, Inc., for stock, other than stated minutes meeting June 27th, 1919.

NAME.	AMOUNT.
L. E. Doan.....	\$ 98,000.00
Louis Titus	150,000.00
J. F. Lucey.....	50,000.00
J. A. Thigpen.....	1,000.00
S. S. Raymond.....	1,000.00

“The above is a true and correct statement of the facts, which are shown by the books of the corporation.

J. P. STEPHENS, Secretary. (Seal)

Shreveport, La., Nov. 18, 1920.”

Morris and Gatch's stock were issued in the name of L. E. Doan, Trustee, for this reason; I had loaned Morris' son \$5,000 and his father left the stock with me as security. I afterwards issued Gatch his 2500 shares and the 2500 shares [280] of Morris' still stands in my name as Trustee on account of that security proposition. I made the loan at his father's request. He paid off the loan since I arrived in San Francisco on this trip, and I will send him the stock as soon as I return to Shreveport. That stock participated in the money and stock that was paid by the General Petroleum. Morris got that.

(Testimony of L. E. Doan.)

Raymond paid cash for his stock. He paid the money to the Doan Oil Company direct. I never executed any formal assignment, or any assignment of any kind to Raymond, Gatch, my brother or sisters, or anybody, of any right to take the stock allotted to me, or any portion of it. The money was paid into the Doan Oil Company and the stock issued to them. I do not think there is any resolution providing for the issuance of the stock to anybody else other than the three people named in the resolution, namely: Lucey, Titus and myself. I simply instructed the Secretary of the Doan Oil Company to issue the stock and the money was paid in and the stock issued to them. I had no correspondence with Raymond with reference to the 10,000 shares issued to him. He was right there at Shreveport. He is no longer connected with the Doan Oil Company. I believe he is in Brazil. I advised him that the stock was going to be issued to him. He got the stock and paid for it. There is nothing in the minutes of the Board of Directors providing for the issuance of that stock to Raymond. I discussed the matter with Lucey and Titus, and it was agreed that he should have the stock. We never went through the formality of passing a resolution. Raymond got part of the \$50,000 in cash and \$200,000 of stock received from the General Petroleum Company. I paid him the money. It came into my hands and I paid him.

[281]

(Testimony of L. E. Doan.)

I told L. E. Doan, Jr., that I would put \$10,000 into the Doan Oil Company's stock for him, so I gave him credit for it, gave him credit June 19, 1919, as shown by my accounts. I told him I had purchased \$10,000 worth of stock for him in the Doan Oil Company, but it was not delivered to him until subsequently. I had many conversations with him. I told him that I would give him \$10,000 worth of stock in the Doan Oil Company as soon as it was organized.

With reference to the Considine-Martin stock, I didn't get 20,000 shares. I got 15,000 shares, no more. In the first place, the money went into the Anglo Trust Company. It was a trust certificate issued for 30,000 shares before the corporation issued any stock. The certificate was afterwards converted into stock of equal amounts of which half belonged to Joe Terry and half to me.

On the second of April, 1920, I transferred 10,000 shares of stock to L. E. Doan, Jr. Raymond got 10,000 shares and paid \$10,000. He got his *pro rata* amount of each one of the original subscribers. He was allowed 3,333 of my share. I didn't get anything for it.

At or about the time of the Burke-Burnett deal I think Titus had advanced me \$20,000 and then \$20,000 a little later. A portion of these moneys, I think, \$20,000 was used in the Burke-Burnett deal.

(Testimony of L. E. Doan.)

Cross-examination.

The directors voted me a salary and I had it credited to my account, \$7,000. That was paid in as part payment on the 100,000 shares of stock. There was no promotion stock issued by the Doan Oil Company at any time to any person. None of the additional stock issue made by the Doan Oil Company [282] pursuant to the resolution of November 10th, 1919, was subscribed by me individually, except \$15,000. That I would like to explain: The books show that I put in \$15,000 in March, 1920, on account of that issue of stock, but I had already received this \$5,000 away back in April, from Mr. Gatch, and I had already promised my son \$10,000 worth of stock, which had not been issued; so that stock was issued direct to them, instead of to me—that is, it was issued to me as trustee.

I first told my son, when I organized the Doan Oil Company, that I was going to subscribe for stock in the Doan Oil Company on his account. I think that was about June, 1919. I told him I was going to acquire for him an interest in the Doan Oil Company. The stock was subsequently issued to him in November, 1919. There was not, at that time, and there never has been, any existing account in the name of myself and Dyer. From November 10th, 1919, until March, 1920, there was never any such joint account, and I never had any funds belonging to Dyer on hand between those dates. During those dates I endeavored to secure money from Dyer. He owed me a balance of

(Testimony of L. E. Doan.)

\$6,000 on a personal matter, and I asked him for it. Later on, in January 1920, we talked the matter over and Dyer paid me \$3,000 at that time, and agreed to pay me the rest of the money the next day.

Redirect Examination.

That \$6,000 referred to the Doan Syndicate matter, the Santa Maria well. [283]

Testimony of Claud Gatch, for Plaintiff.

CLAUD GATCH, called as a witness for the plaintiff, testified as follows:

I have known Doan for five years. I have done business with him within the last few years. In 1919, about the first of the year, I was visiting Mr. Morris at Los Gatos and he said he was going in with Doan or going to assist Doan in some oil project, I think he stated, to the amount of \$5,000, and asked me if I would like to go in that with him, which I said I would. Morris and I borrowed the money. I sent him the amount by draft on New York City, which was payable to him and which he endorsed over to Doan. The date of the draft is April 16th, 1919. I have one or two letters from Doan, one is dated May 17th, 1920.

Letter introduced in evidence by plaintiff, the material parts of which are as follows:

“Shreveport, La., May 17, 1920.

“Mr. Claud Gatch,
Oakland, California.

My dear Gatch:—

I am enclosing you herewith Two Certificates of

(Testimony of Claud Gotch.)

Stock for Twenty-five Hundred Shares Doan Oil Company, Incorporated; also my check for \$1250.00, being Fifty per cent dividend declared on the Thirteenth of April, during my absence in California.

“Mr. Titus and myself made a deal with the General Petroleum Company of California, as owners of more than half of the stock of the Doan Oil Company, in which we guaranteed the delivery of one-half of the Stock of the Doan Oil Company, or in lieu thereof our 1110 Acre ease in the Pine Island District at the option of the General Petroleum Company. The General Petroleum Company have agreed to drill three wells at their expense on the Pine Island Property, and if the wells prove satisfactory they have the right to exercise the option at any time within eight months time from the Sixteenth day of April. They made a payment of Fifty Thousand Dollars in cash and One Thousand Shares of Stock of the General Petroleum Company as a bonus to be applied upon the [284] purchase price, and to be forfeited in the event of their failure to exercise the option. At the time we took this stock, the market value of the General Petroleum was \$150.00 per share, the book value is \$200.00, and it is actually worth Two Hundred Dollars per share. The balance of the purchase price \$1,750.00 will be paid in stock of the General Petroleum Company.

“Under the terms of this option, if you desire to join with us in the sale of our stock it will be

(Testimony of Claud Gotch.)

necessary for you to put one-half of your certificate in escrow pending the fulfillment by the General Petroleum Company. In that event there will be due you and Morris on your Five Thousand Shares of Stock a cash payment of \$625.00 and $12\frac{1}{2}$ shares of the General Petroleum Stock, or one-half of that amount to each of you—\$312.50 cash and $6\frac{1}{4}$ Shares of Stock—and as General Petroleum Company do not sell fractional shares of stock it will be necessary to make an adjustment on basis of the market value of the stock. In the event that you do not care to take this stock at all, either Mr. Titus or myself will take it off your hands at the market value. Please advise me your wishes, and if you desire to sell half of your stock on the same terms as the rest of us please return Twelve Hundred Fifty Shares of Doan Oil Company's Stock to be placed in escrow pending the consummation of the General Petroleum deal.

“I do not think there is any doubt about the final outcome of the deal. In the event of their failure to exercise the option we will be in the neighborhood of Three Hundred Thousand Dollars ahead, and will have all of our properties left. Our production is holding up remarkably well. At this time it is averaging about Seventeen Hundred Barrels per day with three wells nearing completion. We are selling the oil at \$3.15 per barrel at the well. We have \$140,000.00 in the bank, cash,

(Testimony of Claud Gatch.)

and owe nothing: so the Doan Oil Company is in a very flourishing condition.

“With kindest personal regards, I remain,

“Very truly yours,

“L. E. DOAN.”

If I remember right, I got 2500 shares of stock of this Oil Company. There were two certificates aggregating 2500 shares, that is, the first stock I have had in the Doan Oil Company. I had no stock that this took the place of in any other company. That letter of May 17th, 1920, was the first I heard from Doan directly, respecting that investment, unless we had conversations. [285]

Cross-examination.

I received this stock of the Doan Oil Company, and have held it ever since. I received a dividend from the Doan Oil Company, which I retained. I am Vice President of the Central National Bank and the Central Savings Bank at Oakland.

Redirect Examination.

I received \$1250.00 dividend on the stock. I have not yet got any stock in the General Petroleum Company. I have had nothing at all from the General Petroleum. It was intimated that I would receive some. Mr. Doan, in a conversation with me, said, “There will be some stock coming.” That was a few days ago. That wasn’t the first time I had heard of it. Morris told me that he had received some stock. Morris told me that a week or two ago.

(Testimony of W. B. Morris.)

Recross-Examination.

The letter of May 7th gave me information about the General Petroleum Company. The fact is, I have not paid much attention to the matter. [286]

Testimony of W. B. Morris, for Plaintiff.

W. B. MORRIS, called as a witness for the plaintiff, testified as follows:

I know L. E. Doan. I am in the Wholesale Electric Specialty business in Oakland. I have had some correspondence with Doan. I am certain my father had some correspondence with him, but I am unable to locate it. Most of the transaction was between Mr. Doan and my father, who were very good friends. My father died in June, 1920.

I was not present at any conversations between them. My father and Gatch had \$5,000 in the Doan Oil Company between them. My father had never received this *pro rata* of stock due to the fact that previous to this transaction with the Doan Oil Company, Doan had loaned my company \$5,000 on a note endorsed by my father. When the stock of the Doan Oil Company was issued, this stock was held by Mr. Doan as collateral on my company's loan. The note was paid the 1st of March this year. The same dividend that Gatch got was applied on this note of my company and then, as the letter will show, the note was finally cancelled by a cash payment by my company on the 1st of March. Doan still has the certificate. He was expecting to come out here; I simply sent him the

check covering the transaction with this letter, which would do me until Mr. Doan sent me the full papers in the case, which would be the cancelled note and the certificate of stock.

The letters referred to by the witness introduced in evidence on behalf of plaintiff are as follows:

(Letterhead of DOAN OIL COMPANY, INC.)
Shreveport, La., Sept. 4th, 1920.

“Mr. W. M. Morris,
316 12th Street,
Oakland, Calif.

“My Dear Morris: [287]

“Replying to yours of August 24th, which arrived here during my absence in Kentucky, I will state that the Certificate of stock belonging to your father in the Doan Oil Company is certificate No. 51, 2500 shares standing in the name of L. E. Doan, Trustee on the books. It is common stock, there being no preferred stock. * * *

“If it will be necessary for me to put in a claim against your father’s estate for the \$5000.00 note. There is a credit on the note of \$1250.00 cash, being a 50% dividend on the 2500 shares of stock, and also a further credit of \$312.50 cash payment by the General Petroleum for an option on behalf of the stock of the Doan Oil Company and a further credit of \$625.00 par value, of stock the General Petroleum paid us on account of the option of the General Petroleum. Please advise me.

“Very sincerely yours,

“L. E. DOAN.”

(Letterhead of DOAN OIL COMPANY, INC.)
Shreveport, La. Feby. 21st, 1921.

“Mr. W. E. Morris,
c/o Creighton-Morris Company,
Oakland, California.

“My dear Will:

“Much as I regret to call your note; on account of the many expenses and income tax, which I will have to pay this coming month, I am obliged to call it, and I shall be greatly obliged if you will forward me your check at your earliest convenience. As you know I am holding 2500 shares Doan Oil Company stock as collateral security. There has been paid on the stock a dividend of \$1250.00, also a cash payment by the General Petroleum Company of \$312.50. There is a payment of stock in the General Petroleum of six and a quarter shares which with dividends paid to date, figuring the present market value of the stock, will amount to \$832.50, allowing you interest of 7% on the \$1250.00 dividend payment from the Doan Oil Company, it will just offset the interest due to date on your note, so there will be a balance due me of \$2625.00.

“There has been a big slump here in the price of oil; the market price of crude oil has dropped from \$3.50 a barrel to \$1.65 a barrel. This will make a big difference in the revenue of the Doan Oil Company, and will have a big bearing on the deal of the General Petroleum Company. It is impossible to say at this time what that Company will do. They have not yet completed their drilling program

(Testimony of C. R. Stevens.)

and I am unable to state just what proposition they will make us. I am glad [288] to say, however, that the Doan Oil Company is in an excellent shape financially; we owe absolutely nothing; have \$60,000.00 in the Bank and even at the reduced price of oil, our income will be in the neighborhood of \$25,000.00 a month.

"I trust that you will not be inconvenienced in any way by my calling the note.

"With kind personal regards, I remain,

"Very truly yours,

"L. E. DOAN."

Testimony of C. R. Stevens, for Plaintiff.

C. R. STEVENS, a witness called on behalf of plaintiff, testified as follows:

I am Secretary of the General Petroleum Corporation and have been such since the Company was organized, since 1916. Our Company entered into a contract dated April 16, 1920, with the Doan Oil Company; also there was an extension of that dated in October, 1920.

These two documents were offered in evidence by plaintiff. Objected to by defendant on the grounds immaterial, irrelevant and incompetent, not within the issues of the case, and relating to a transaction subsequent to the termination of any partnership; the same objection having been made to all testimony relating to General Petroleum Corporation. Objection overruled and exception noted.

The agreement is as follows, omitting formal and immaterial parts thereof:

THIS AGREEMENT, made and entered into this 16th day of April, 1920, by and between the DOAN OIL COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Louisiana, first party, L. E. DOAN and LOUIS TITUS, second parties, and GENERAL PETROLEUM CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of California, third party. [289]

WITNESSETH:

WHEREAS, first party is the holder of a lease on that certain piece or parcel of land situate in the Parish of Caddo, State of Louisiana, known and designated as its Pine Island Lease,

AND WHEREAS, second parties are the owners or control not less than fifty (50) per cent of the capital stock of the first party.

NOW THEREFORE, in consideration of their mutual covenants hereinafter contained, the parties hereto agree as follows:

1. First party hereby grants to the third party the right or option for a period of eight (8) months from and after the date hereof, time being of the essence unless extended as hereinafter provided, to purchase the lease to the property hereinabove described for the sum of Two Million Dollars (\$2,000,000), payable Fifty Thousand Dollars (\$50,000.00) in cash, and One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000.00) in shares of the capital stock of the third party at Two

Hundred Dollars (\$200.00) per share, provided the option to purchase the stock of the first party hereinafter referred to has not been exercised by the third party.

2. Second parties hereby grant to third party the right or option to purchase fifty (50) per cent of the capital stock of first party for a period of eight (8) months from and after the date hereof, time being of the essence, unless extended as hereinafter provided, for the sum of Two Million Dollars (\$2,000,000) payable Fifty Thousand Dollars (\$50,000) in cash, and One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000) in shares of the capital stock of third party at Two Hundred Dollars (\$200.00) per share, provided the option to purchase the lease extended in paragraph one hereof is not exercised by third party.

3. This party agrees to pay to second parties the sum of Fifty Thousand Dollars (\$50,000.00) in cash on the execution hereof, and Two Hundred Thousand Dollars (\$200,000) in stock of the third party at Two Hundred Dollars (\$200.00) per share, as soon as permission to issue said stock is granted by the State Corporation Commissioner of the State of California, this payment to apply on the purchase price in the event of the exercise of their option.

4. Third party is hereby granted the right by first party and agrees to enter upon the lands hereinabove described and drill three (3) wells thereon to such depth as will, to its satisfaction, test the oil producing prospects of said party. All of said work shall be done at the sole cost and expense of

third party, and shall be carried on in accordance with the terms of the lease covering said property.

[290] Third party shall have the right to use any oil, gas or water developed by it on said land, free of cost, in drilling said wells.

5. First party agrees to assist in such work to such extent as may be requested with its organization now in Louisiana but at the cost of third party.

6. It is contemplated that not more than ten (10) days shall elapse between the completion of one well and the commencement of the next well, and that the work of drilling shall be carried on with proper diligence, but if, by reason of causes not the fault of third party, the completion of said wells shall be delayed beyond eight (8) months, these options shall run until said wells can be completed.

7. Pending the exercise of the option to buy fifty (50) per cent of the stock of the first party, as hereinabove set out the party of the first part may declare dividends in its discretion, on its capital stock. In the event said dividends are declared, such dividends shall be received by the stockholders of said Company, but in the event the party of the third part exercise its option to purchase fifty (50) per cent of said stock, then the dividends paid on such fifty (50) per cent of said stock and said party of the third part shall be entitled to exercise said option by paying the net balance due after the deduction of said dividends in shares of the capital

stock of the party of the third part at the said price of two Hundred Dollars (\$200.00) per share.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in triplicate, the day and year first hereinabove written.

DOAN OIL COMPANY,
By (Signed) L. E. DOAN,
President.

LOUIS TITUS,
Vice-President.

(Signed) LOUIS TITUS.
L. E. DOAN.

GENERAL PETROLEUM CORPORATION.

By (Signed) JOHN BARNESON,
President.

C. R. STEVENS,
Secretary. [291]

The agreement of extension, dated the — day of October, 1920, extended the option referred to in the agreement of April 16, 1920, until the completion of two wells referred to in the latter agreement and in other respects modified the first agreement. No portion of the latter agreement is material to the issues involved herein.

The General Petroleum Company received a letter signed Doan Oil Company by Doan, in the handwriting of Doan. Plaintiff's objection thereto overruled and exceptions noted. The letter is as follows:

(Letterhead of LOUIS TITUS.)

General Petroleum Co.,
 San Francisco Cal.

May 8, 1920.

Dear Sirs:—

This will confirm request that the 1000 shares of the Capital Stock of your corporation issued in accordance with terms of agreement between Doan Oil Company first party; L. E. Doan and Louis Titus second parties; and General Petroleum Corporation third party; dated April 16, 1920; be issued to the following individuals and corporation and in the amount set opposite the names:

	S. S. Raymond	25 shares
	L. E. Doan, Jr.	25 “
	C. E. Doan	12 “
	R. E. Doan	13 “
	H. A. Doan & M. E. Doan	12 “
	L. E. Doan, Trustee	13 “
(Total shrs.)	J. F. Lucy	162 “
(Total shrs.)	L. E. Doan	248 “
	East Side Investment Co.	430 “
	Louis Titus	10 “
	Louis Titus, Trustee	50 “

(Signed) L. E. DOAN,
 DOAN OIL CO.,

By L. E. DOAN, Pres. [292]

The stock of the General Petroleum Company was issued pursuant to this letter and in the names and the number of shares as appears in the letter.

Memorandum introduced by plaintiff showing the certificates of shares of common stock in General Petroleum Company which were issued May 3d, 1920, as follows:

	Certificate	Shares	Subsequent Transfer
S. S. Raymond.....	18168	25	Jan. 12, 1921
L. E. Doan, Jr.....	18169	25	Sept. 2, 1921
C. E. Doan.....	18170	12	
R. E. Doan.....	18171	13	
H. A. Doan & M. E. Doan.....	18172	12	
L. E. Doan, Trustee.....	18173	13	
J. F. Lucy.....	18174	50	Aug. 16, 1920
“	18175	50	Aug. 13, 1920
“	18176	50	Aug. 13, 1920
“	18177	12	Jun. 29, 1920
L. E. Doan.....	18178	13	
“	18179	10	
“	A 2981	100	
“	A 2982	100	
“	18180	25	

	Certificate	Shares	Subsequent Transfer
East Side Investment Co.....	A 2983	100	Feb. 23, 1921
“ “	A 2984	100	“ “
“ “ “	A 2985	100	“ “
“ “ “	A 2986	100	“ “
“ “ “	18181	30	“ “
Louis Titus.....	18182	10	
Louis Titus, Trustee.....	18183	50	Feb. 24, 1921
		<hr/>	
		1000	
	Total		

(Testimony of C. E. Doan.)

Above memorandum also showing that eleven persons who became shareholders in Doan Oil Company did not participate in the division of General Petroleum Corporation stock.

I had no further correspondence with Doan.

Defendant made a motion to strike all evidence introduced through the witness Stevens and all exhibits introduced while his testimony was being taken on the grounds already urged. Motion denied and exception noted.

Testimony of C. E. Doan, for Plaintiff.

C. E. DOAN, called as a witness on behalf of plaintiff, testified as follows:

I am a brother of L. E. Doan. I had a telegram from my brother as follows:

“Shreveport La., 12:18 P. M. December 19, 1919.

“C. E. Doan,

Courthouse, Stockton.

Can use yours, Roland's and the girls' money up to fifteen thousand dollars on January first. Wire what I can depend on.

L. E. DOAN.”

I also received the following telegram:

“Shreveport, La., Sept. 25, 1919.

“C. E. Doan,

Courthouse, Stockton, Calif.

Brought in well today, over four thousand barrels daily, two dollar oil. This makes things look very good for the Doan Oil Company. Please tell mother.

L. E. DOAN.”

(Testimony of C. E. Doan.)

I am a shorthand reporter in the Superior Court of San Joaquin County. I have stock in the Doan Oil Company. I received it about March, 1920. I paid for five thousand shares, [294] but I had two hundred shares of that issued to my daughter and the certificate for 4800 shares issued to me. My daughter's name is Parks.

In the same correspondence I received a certificate for 5,000 shares for my son, Roland E. Doan, and 5,000 shares for my sisters, Miss Hattie A. Doan and Miss Lizzie Doan. I think that my sister Lizzie took 3500, and my sister Hattie 1500. My certificate was issued in my name, my sisters' in their names, and my son's in his name. I sent a letter to my brother of which the following is a copy.

(Letterhead of C. E. DOAN.)

“Stockton, Cal., Dec. 26th, 1919.

“My dear Brother:—

Your telegram recd., and I am enclosing the following:

S. S. & L. S. Draft No. 8259 on Chicago	
for	\$1500.00
being Hattie's money.	
Union Safe Dep. Cashier's Check No.	
3895 for	\$3500.00
being Lizzie's money.	
Union Safe Dep. Cashier's Check No.	
3898 for	\$5000.00
being Roland's money; and	

(Testimony of C. E. Doan.)

Bank Italy Cashier's Check No. 44240,

for \$5000.00

being my money.

Total \$15000.00

You will note that one Union Safe Dep. Check is signed by E. C. Stewart and one by C. E. Stewart. They were obtained at different times. The one signed E. C. Stewart is signed by the President; the other is signed by D. E. Stewart, the son of E. C.

I do not know just how the girls want their stock made out, [295] whether for the amounts they have put in or whether an equal amount for each. They will write to you about this.

I have written to Roland about his, as to whether he wants it sent to him or sent to me and he will write you about that.

When issuing my stock, if you can do so conveniently and without any additional expense, I wish you would issue a certificate for two hundred shares to Irma (Mrs. Elbert C. Parks) and the balance to me. I promise her that much stock and if it can be issued that way please do so.

Roland's Certificate in Union Safe was made out to me, but I have endorsed same over to you. * * *

CHAS."

Cross-examination.

I think the first conversation I had with my brother with reference to the purchase of any Doan

(Testimony of C. E. Doan.)

Oil Company stock was some time in November, 1919, at Stockton. My brother stated that he thought they had a good thing down there and they were going to issue some more stock, and he would like to have us come in. He thought he could make some money for us, and when he got ready to get the money he would let us know. That is about the sum and substance of it. He let me know by the above telegram dated December 19, 1919. Roland is my son. Upon receipt of that telegram we sent these drafts in a short time. They are the drafts specified in the letter of December 26th, 1919.

The drafts introduced in evidence on behalf of defendant, and are as outlined in the letter of December 26, 1919. [296]

All told I paid my brother \$15,000 about the time of this matter. Of that amount \$5,000 was paid on my own account, the other \$10,000 was paid as follows: \$5,000 for my son Roland; \$5,000 for my two sisters. I paid my son's money at his request. He was in Pittsburgh at the time and he directed me to draw the money from the bank. He telegraphed me such directions.

The telegram introduced in evidence as follows:

"Pittsburgh, Pa., 10:40 AM. Dec. 23, 1919.

C. E. Doan,

Courthouse, Stockton, California.

I have wired Union Safe Deposit to deliver five thousand to you. Try and arrange, if possible so that I don't lose all interest on this amount, which

(Testimony of C. E. Doan.)

is payable January 1st. Please handle this investment for me and send money direct yourself.

R. E. DOAN."

A Union Safe Deposit Bank Book in the name of Rowland E. Doan shows that on December 26, 1919, a withdrawal of \$5,000 was made.

That is my son's bank-book. After this money was paid by me to L. E. Doan we received the certificates of stock from the Doan Oil Company. I think it is all in my safe deposit box in the bank. Just there as a convenient depository, so that it will be safe. Subsequent to the time I received the stock I received dividends from the Doan Oil Company. I received individually \$2400.00 That money I retained myself. I know that my sisters and my son also received a dividend and they retained the money. [297]

Redirect Examination.

In November, 1919, I had a conversation with my brother in Stockton about the Doan Oil Company. He said that it was a good thing. I believe he told me that they had authorized the issuance of more stock in the company. As I understood it, the stock was going to be issued. I understood we were buying the stock from the company. We were getting in on the same ground floor that he was getting in on, at the same price. He said he thought the future of the company was good. This conversation was prior to my mother's death, November 27th.

Testimony of L. E. Doan, Jr., for Plaintiff.

L. E. DOAN, Jr., called as a witness, testified as follows:

I am in the sporting goods business at Stockton; that is my residence. I am a stockholder in the Doan Oil Company. My stock was issued in April, 1920. The first conversation I had with my father about the Doan Oil Company was early in June, 1919. I think the corporation was formed about that time. He told me that I was going to have an interest with him in Louisiana or in Texas, or in all his oil deals. He didn't at that particular time say what interest it would be, but a little bit later I was told I was to get a \$10,000 interest. That \$10,000 interest was to be in the Louisiana Oil Operations. I subsequently did receive a \$10,000 interest in the Doan Oil Company. That was in April, 1920. I was in Shreveport at that time. I have the certificate now. It is in Stockton, in my possession. I have always retained the certificate since its issuance to me. I received dividends on the stock to the extent of \$5,000.00. I [298] invested those dividends in my own business.

Cross-examination.

My father either wrote to me or told me that I was to have an interest in the Doan Oil Company. Very possibly he wrote me. I do not believe I have any letters. I very seldom kept any personal letters. I knew a long time before I got an interest that I was to get it. I am not sure whether he wrote or whether he told me. I believe he did both.

(Testimony of L. E. Doan, Jr.)

We often talked about these things whenever I would see him; he often wrote me about them. He wrote to me and told me more than once that I was to get an interest in the Doan Oil Company. I don't remember whether he mentioned the exact \$10,000 part of it by letter or not. It was impossible for me to state what I wrote to my father respecting that transaction. I cannot recollect exactly what I said in regard to thanking him. I never asked him when I would get my interest. He never told me when I would get it, until I actually got it. That was in April, 1920. In April, 1919, my father talked generally about my having an interest in his operations, whether they were in Louisiana or Texas. He talked about it a great many times during May. We often talked about the possibilities down there. I remember as far back as November, 1918, having been told by my father that I would be taken in with him and given an interest in his oil operations in Texas. That was while I was in the service. I was discharged March 18, 1919.

My father purchased the stock of the North Texas Supply Company for me in June, 1919. I went to Wichita Falls and remained there until March, 1920, and then went over to Louisiana. I didn't see my father very early in June, until sometime in September. During that time the only way I [299] could have heard of these things was through his writing to me. I did see him in the early part of June. I may possibly have seen him

(Testimony of L. E. Doan, Jr.)

on one occasion when I went to Fort Worth, in August. I don't remember when I first heard the name of the Doan Oil Company. It was after it was organized. I was not told I was to get an interest in the Doan Oil Company before it was organized. My father I think first went to Shreveport in April or May. I believe he was first there in April and then went over with Titus in May. I never went to Shreveport until November.

Redirect Examination.

I have no brothers or sisters. My mother is not living. [300]

Testimony of B. T. Dyer, for Complainant.

B. T. DYER, called as a witness for the plaintiff, testified as follows:

I met Doan in San Francisco in November, 1919. We had a conversation as to the value of the Doan Oil Company stock. He told me it was worth from five to ten dollars a share. I made a proposition to him with reference to the Bull Bayou property; I offered \$800,000 for the eighty and forty acre tracts on behalf of the American Oil & Engineering Corporation. He said that he would not sell it for that. He had been offered a million and a quarter for the two pieces. They were known as the Pugh and Nelson leases. We talked about the Pine Island property. He said he thought that was the greatest lease in the district. He and Titus had both looked it over and thought it was a wonderful property, and thought that was where the big money would

(Testimony of B. T. Dyer.)

be, the Pine Island property. Along in the Summer after the \$2667.00 had been returned by the Considine Oil Company, he told me to make a note of that in my memorandum of account, that we had 20,000 shares as a bonus; that that had to be pooled with a bunch of other stock and would not be out of the pool until the following summer. We discussed the fact that we thought we could sell the interim certificates, or whatever you call them, or pooling certificates. I asked him if he thought it would be a good scheme to apply it on our Louisiana investment and he said that he thought that the income tax would be so big we had better leave it alone. I understand Terry was to get 10,000 shares, and Doan and I were to have 20,000. I did not hear anything about 15,000. Doan stated that to me. He handled that transaction. I had very little to do with it. I have filed an account here.

The account filed by the plaintiff is as follows:
[301]

“STATEMENT OF ACCOUNT BETWEEN B. T.
DYER AND L. E. DOAN.
DEBIT.

One half balance of expense, open account,	
September 15, 1919, to March 22, 1920	\$337.32
Expense account April and May 1920,	
\$500 per month. Presented at direc-	
tion of L. E. Doan.....	1,000.00
Attorney fee paid Couch.....	25.00
One half of automobile account.....	1,332.50

\$2,694.82

(Testimony of B. T. Dyer.)

CREDIT.

One half amount received last 151½ acres

Oklahoma lease.....\$2,092.50

Balance due B. T. Dyer.....\$ 602.32

Interest not computed on above items pursuant to direction of the Special Master.

No figures or items are furnished on Louisiana properties or Doan Oil Co. matters or transactions for the reason that plaintiff has not personal knowledge of date from which such figures or items can be prepared. The same must be elicited from the account of defendant and the testimony produced upon the accounting.

No date is given with reference to the Santa Maria (California) transactions for the reasons:

Plaintiff has never received specific date concerning said matters, and this transaction was a California one and not involved in the partnership.

Plaintiff, however, concedes that there is due defendant thereon about \$3,000.00."

The item of \$337.33 was eliminated. The item of \$1,000.00 [302] was agreed on in a talk between Doan and myself. He said, "Well, make it about \$500 a month, and I think that will be all right," and I sat right down and made it out on a letter-head and mailed it to them, to the Doan Oil Company at Shreveport.

(Testimony of B. T. Dyer.)

Cross-examination.

The \$1,000 is a charge against the Doan Oil Company. Technically speaking, it is not against Mr. Doan individually. The items of that account is what Doan and I discussed and we lumped it at about \$500 a month. I have no vouchers for it outside of Western Union, club bills, and automobile. I cannot tell what those items are.

I subscribed to 10,000 shares of the North Texas Supply Company stock; I did not take that stock; I could not at that time. I did not pay for any stock in the North Texas Supply Company, except for a few shares, just enough to become an officer; I paid for those; I think that stock is in Los Angeles; I think there are ten or fifteen shares. I bought that stock and paid for it. The stock that I subscribed for and never purchased went to F. E. Couch. I got Couch and Owens to take it. They were friends of ours and we wanted them in. By we I mean Doan, Lucey and myself. Doan said that he wanted them in at the time of the organization. Both Doan and I talked to Couch about his taking the stock. That was in Fort Worth Club. I guess I made the final arrangements; I don't know where Doan was at that time. The final arrangement with Couch was that he simply took the stock that I was obligated for and they have got it now. The stock returned dividends; It paid one per cent a month while I was there and since I quit I think they paid 100% stock dividends and they are paying $3/4$ of a cent a month on the gross

(Testimony of B. T. Dyer.)

issue. I consider it pretty valuable stock. I think when I [303] left according to the books the stock was \$2.18 a share. Its par value is \$1.00. I made many offers to purchase stock of the Doan Oil Company to Doan. I told him that I was ready to put up my equal share with him at any time, and pestered the life out of him many times, because it was getting so big that I wanted to have it, that was all. But Doan told me, "Just let it ride the way it is." They were going to reorganize and were going to make a new company and turn this all in, where we would get our money back with some reasonable profit, and still control the new company; that was the general idea, but he wanted to keep the voting power in his hands.

I asked to purchase half of his holdings. I offered to pay one-half of what I owed him; if it had lost, there would not have been any argument about it. As to any arrangement to purchase that stock, I was going to borrow. As to the cost of borrowing, we did not have anything definite settled, but I stated that I would have to give Fleishhacker some of it. I went to him and it was absolutely understood—I asked him if I could get this money, and he said, "Sure, I will see you through it," but Doan did not want me to go to him. That is another thing he stated, he did not want Fleishhacker to get one penny in it. I went to Fleishhacker every time I came to town. I had a definite understanding with Fleishhacker that he would loan me sufficient money to purchase this stock from

(Testimony of B. T. Dyer.)

Doan. That was shortly after the Doan Oil Company was organized. I was to borrow \$50,000 from Fleishhacker, pay my half of the Doan third—for my one-sixth—Doan, Lucey and I were to have one-sixth apiece and Titus the other half. The conversation I had with Fleishhacker was the first time that I was back after the Doan Oil Company was organized. I went in and told him all about it. I think it was in July, [304] 1919. I am referring to Herbert Fleishhacker. I saw him in his office. I told him about Doan having picked up this stuff and they had made a \$300,000 pool, of which Titus had one-half and Lucy, Doan and I had the other half, and it looked awfully good, and my interests were to be \$50,000 for my half of the Doan end, and I wanted to know if I could depend on him if I had to have this—if I could depend on him to let me have it, and he said, "I have always taken care of you, you know that, and you certainly can." And I said, "I do not want any mistake about this, they may reorganize and turn this over shortly, but I have told Doan that I cannot go too far and keep pace with Titus if he is going too strong; but I understand this is the limit." And he said, "All right, you can depend on it when you want it." Fleishhacker will bear me out on that. As to his charge, I figured that I would have to give him about one-fourth. He did not fix on the price. I was going to give him one-fourth of the \$50,000 of stock if I had to get it. That was in order that I might have this \$50,000. I had subsequent conver-

(Testimony of B. T. Dyer.)

sations with Fleishhacker. Every time I came to town I would go down and talk to him. I cannot recall any direct conversation right now. As to my arrangement with Fleishhacker, what I thought I would have to do was to get this \$50,000 and buy the stock and then turn over one-fourth of the stock back to Fleishhacker. I told him that I would see that he got some of it, but he did not exact it from me. Before July he had given me a borrowing credit of \$50,000 individually. That was a couple of years prior to this. I had a pretty good borrowing capacity; I would wire him every once in a while—I would have a deal coming up and I would wire if I could get \$10,000 or \$20,000, and I would have a reply sent back with a draft. I always knew he was with me. [305] I never used those loans because Doan did not want me to get it from him. I had another source from which I could get this \$50,000. I arranged for it in New York with the American Oil Engineering Corporation. That was in December, 1919. Nothing was said as to how much I would have to pay them for the \$50,000. At the time of my letter of January 21, 1920, I had no definite understanding with Fleishhacker other than as I have testified to in July, 1919.

From the first of May, 1919, to April 1, 1920, I received a salary from the North Texas Supply Company. I also received a salary from the American Oil Engineering Company, which started in December, 1919. The North Texas salary was \$500 a month. I was also to get 10,000 shares of bonus

(Testimony of B. T. Dyer.)

stock when I made a success of the Company. I did not receive that stock. My first check from the American Oil Company was \$1,000, and along the first of 1920 they gave me \$1250 a month. I dissipated those salaries, spent it in expenses, living expenses, in every way. I had a credit of a limited amount established at the banking establishment of which Herbert Fleishhacker was President. I had once before a credit of \$50,000 that I could draw on. I had a definite arrangement with the bank which would have permitted me to have drawn \$50,000 without any further arrangement with the institution. That was prior to my going to Texas; Fleishhacker took me over to the note window and told the note man to give me anything I wanted on my note up to \$50,000. There was nothing said for how long a term that credit was to extend. That was in connection with a deal in Wyoming, which I was handling and financing and in which Doan was an equal partner with me. I went ahead and spent between seven and ten thousand dollars. I went to Fleishhacker; he took me over to the window [306] and told the man to give me anything I wanted up to \$50,000, and I said, "You were to finance this," and he said, "Well, that is all right, let it ride that way." So I dropped the matter.

As to the other conversation with Feishhacker in July, 1919, I told Fleishhacker that Larry and I had gotten into something over there and it was going to take a lot of money, it apparently was very good, as Titus was going in and Lucey, and my in-

(Testimony of B. T. Dyer.)

terests were \$50,000, \$1 a share for 50,000 shares, but I did not know that I was going to need it or not, but I wanted to know definitely if I could have it if I needed it, I did not want any mistake about it, and Mr. Fleishhacker said, "Why, yes, I have always taken care of you, and you can absolutely count on it." Nothing came up as to my giving the bank any collateral. I don't think that at any time that he arranged definitely that I could draw or put my note in for that amount. I don't think we went that far, but later on I wired him a time or two to know if I could get \$20,000 and he wired back to attach my note to the draft. Doan never to my knowledge or recollection went over to Fleishhacker's institution with me to arrange for a \$5,000 credit for me.

Redirect Examination.

As to my statement to Lucey that I had no money to put in the North Texas Supply Company, I had no money to put in the supply business; I had never made any arrangement for getting money for any mercantile business. I could get money for the oil business. I had never made any arrangements to get into the supply business, financially.

Recross-examination.

I never had a firm commitment in writing from Doan that I [307] could sell the Bull Bayou and Pine Island properties. No other person ever made an offer in writing to purchase those properties. I had a verbal offer from Mr. Seaton

(Testimony of B. T. Dyer.)

Porter and Hobart Porter. They told me that I could purchase it from Doan for \$800,000. That was the 80 and 40-acre piece in Bull Bayou. They never spoke of any other property of the Doan Oil Company. I do not recall any other person telling me that they would purchase any of this property. They told me that on one trip to New York in October or November. They did not state anything with reference to terms of purchase. They had not personally examined the properties. They had someone down there that had reported to them on it. I do not know who that was. I might have helped to fix that price because I knew Doan had told me that he had been offered three-quarters of a million; I don't recall by whom. When they told me to go ahead and negotiate the purchase for \$800,000, I both wired and wrote Doan that I had something of importance, I wanted to see him. That was the latter part of November at the Palace Hotel here. The conversation with Porter was about a month or six weeks prior to that.

Redirect Examination.

Wynn Meredith was one of the Vice Presidents of the American Oil Engineering Company at that time. He was cognizant of this authority to negotiate. His office is in the Nevada Bank Building, San Francisco. Hobart Porter was President and Seaton Porter was Vice-President of the company.

L. E. Doan, Recalled in Rebuttal on Behalf of Defendant.

I never made any statement to Dyer with reference to the Considine-Martin properties. I never stated to Dyer at any time [308] that we were entitled to 20,000 par value of the Considine-Martin stock; I never did, because I never had 20,000 shares; I never was entitled to 20,000 shares. I made a loan to Terry of \$2666.67, which was a part of the option price that the Syndicate paid on this property, with the understanding that whatever stock Mr. Terry received as a result of this \$2667 invested, that he would split equally. Terry agreed to pay me back half of this money. Later on, on the reorganization of the company there were 30,000 shares of stock issued to me as a result of that—we were entitled to that proportion of the bonus stock—Terry did not want to carry the stock in his name at that time so he had it all put in my name, every bit of it, and I afterwards assigned 15,000 of the certificate over to him, Mr. Terry, and I still have 15,000 left. In addition to the 15,000 shares of stock that Mr. Terry received, he also received a bonus of a number of thousand shares, I don't know how many, for compensation, because he devoted his whole time to the promotion of this company and he and several others were voted an additional bonus, which I did not participate in at all, had nothing to do with whatever. All I got was the stock that I paid for. I never have owned a share of stock in the Con-

(Testimony of C. W. Durbrow.)

Considine-Martin Oil Company in excess of the 15,000 shares.

Testimony of C. W. Durbrow, for Defendant.

C. W. DURBROW, a witness called in behalf of the defendant, testified as follows:

I am the attorney for Joseph E. Terry. I have been since June, 1918. Terry upon many occasions has requested me to handle transactions for him at San Francisco outside of my work for him as attorney. He asked me as a favor if I would arrange to obtain [309] for him from the Anglo-California Trust Company a certificate which had been issued, entitling him to 15,000 shares of Considine-Martin Oil Company stock and have those certificates of stock issued in the following: C. W. Durbrow, 2500 shares; R. W. Landon, 2500 shares; John W. Considine, 1250 shares; E. C. Weinrich, 250 shares; L. E. Doan, 500 shares; L. E. Doan, 8 certificates, each of 1000, 8000 shares, making a total of 15,000 shares, and requesting me to keep his name out of the transaction for the time being.

Pursuant to that request, I went to the Anglo-California Trust Company and had certificates issued in the amounts and on behalf of the parties named by me. These certificates were delivered to me, and by myself to Mr. Terry. I sent them to him. In August, 1920, Mr. Terry asked me if I would act as trustee for Dr. W. B. Coffey and Dr. W. I. Terry, stating that he was indebted to the

(Testimony of C. W. Durbrow.)

doctors, and wished to have shares of the Considine-Martin Oil Company placed in my name as trustee, to hold for their use and benefit until his indebtedness had been repaid. Pursuant to that request, 10,875 shares of stock of the Considine-Martin Oil Company were issued to me in my name, and I hold that stock under a declaration of trust for and on behalf of Dr. Terry and Dr. Coffey. On April 13, 1920, I executed a declaration of trust, addressed to Dr. W. B. Coffey and Dr. Wallace I. Terry, I hold in my possession escrow certificate No. 26 representing 8,375 shares of the Considine-Martin Oil Co. issued in my name as trustee this day in trust for Wallace I. Terry and W. B. Coffey, and for their use and benefit. Dated San Francisco, April 13, 1920, signed C. W. Durbrow.

On April 21, 1920, I addressed a communication to Dr. W. B. Coffey and Dr. Walter I. Terry, evidently in error, it should be Wallace I. Terry, which reads: [310]

“I have received from Anglo-California Trust Company certificate No. 27, which I hold in trust for the use and benefit of Walter B. Coffey and Walter I. Terry”—“Walter” being an error, as far as Terry is concerned—“acknowledging that they received certificate No. 240 for 2500 shares of stock of the Considine-Martin Oil Company standing in my name, to be delivered under the provisions of resolution passed by the board August 26, 1919.”

I now hold in my possession and in my name,

(Testimony of C. W. Durbrow.)
certificate No. 240, 2500 shares, certificate No. 26, for 8375 shares, covered by a declaration of trust later executed, a copy of which I could not find in my files, which is supplementary of the agreement to which I have referred.

Cross-examination.

I did nothing but carry out the instructions of Mr. Terry. My instructions were partially in writing, but most were given to me by Terry in the presence of Dr. Coffey at my office. I got written instructions from Terry to go and get 15,000 shares of stock. I have that letter.

The following letter introduced in evidence:

“Bowling Green, Ky., September 2, 1920.

“Mr. C. W. Durbrow,
65 Market Street,
San Francisco, Calif.

“Dear Mr. Durbrow:

“I am handing you herewith in this registered letter certificate number 244, for 1000 shares of the Considine-Martin Oil Company, in favor of L. E. Doan and indorsed by him in blank.

“Please have this certificate exchanged for four certificates [311] in favor of Charles A. Miller, each certificate for 100 shares.

“One (1) certificate of 500 shares in favor of
Chester R. Gordon,

“One (1) certificate of 100 shares in favor of yourself.

“Kindly pay the charges incident to this transfer, advising me of the amount, which I will remit to you; inclosing stock book stubs for signature and return to the company for Charles A. Miller and Chester A. Gordon, on which, when they sign, I will have them put their addresses, and together with the new certificates register letter them to me in care of the First National Bank, Shreveport, Louisiana.

“Please mail carbon of your letter to me here at the above address.

“Thanking you in advance for your attention to this matter, I beg to remain,

“Yours very truly,

“J. E. TERRY.”

Here is a letter bearing upon the subject which I assume you would like to have read:

HOTEL YOUREE.

Market Street, Texas to Travis.

Shreveport, La.

Phone 4300.

April 24th, 1920.

“Mr. C. W. Durbrow,
65 Market Street,
San Francisco, Calif.

“Dear Mr. Durbrow:

“Your favor of the 16th arrived this morning, having taken eight days to make the trip, which ordinarily requires only four days. I note you

(Testimony of C. W. Durbrow.)

have at last succeeded in getting a transfer of the certificate of trust of 8375 shares of the Con-sidine-Martin Oil Compay I sent you and that the [312] Trustee Mr. Cordrey advises you he hopes to have the 2500 shares out of the 15,000 shares I sent by Mr. Doan transferred in a few days. Why they have made so much delay about transferring these certificates I don't understand and if you find out would be pleased to have you advise me at your convenience. I also note contents of carbon of your acknowledgment of trust to Dr. Terry and Dr. Coffey."

"Instructions to get the 15,000 shares of stock are contained in the following telegram, dated April 1, 1920, from Shreveport, La.

"C. W. Durbrow, 65 Market Street, San Francisco, Calif.

"Will send with L. E. Doan expecting go California this week Large certificate to be split up and he will deliver you twenty-five hundred shares. Martin leaving for San Francisco today. Well drilling at fifteen hundred feet under favorable conditions and very promising outlook. Letter confirming.

J. E. TERRY."

Pursuant to that telegram I sent to the Trust Company and got certificates of stock. I took a certificate of stock to them that was sent to me by Terry, or delivered by Doan, I forget which. I received no other certificates of stock from anyone else. Terry told me on several occasions that

(Testimony of Herbert Fleischhacker.)

he did not wish the stock to appear in his name and he said that he had arranged to have it issued to Larry Doan.

Testimony of Herbert Fleischhacker, for Defendant.

HERBERT FLEISCHHACKER, called as a witness for the defendant, testified as follows:

I am acquainted with Dyer and Doan. Dyer has been in to see me on numerous occasions and has had money from the bank, [313] has had credit from the bank, but as to any particular conversation with him I cannot recall. As to how large a credit he has had at any one time, I tried to look up this morning, the data on his account, and I believe Dyer owed the bank \$10,000, without security, on his note. I cannot recall whether that was with reference to any particular transaction or when that credit was established. As to my telling Dyer that he could have \$50,000, and saying, "All right, you can depend upon it when you want it," I cannot recall that. I cannot recall taking Dyer over to the note teller in June or July, 1919, and telling the note teller to give Dyer anything he wanted on his note up to \$50,000. I know that Dyer has been in numerous times and stated to me that he was going into a proposition, and I have always told him to put it up to me. I never actually advanced an individual loan, I cannot do it, that is not sound banking, unless I know just what proposition the money is for. But had Dyer

(Testimony of Herbert Fleischhacker.)

come in and asked for \$15,000 or \$20,000 for a proposition, I undoubtedly would have given it to him, without security.

I have known Dyer a good many years and have given him a limited amount of credit, but as to any definite amount, I have no recollection. Our books show, I believe, that \$10,000 was given Dyer without security. I cannot recall Dyer coming to me at my office and saying that he had become interested in a \$300,000 pool of which Mr. Titus had one-half, Lucey, Doan and Dyer had the other half, and it looked awfully good, etc. I cannot recall any definite \$50,000 credit ever having been granted by me. It is possible that Dyer may have wired me asking if he could get \$10,000 or \$20,000, and that I replied to him that if he would send back his note I would cover it with a draft. I won't say that had Dyer come in and asked for \$50,000 [314] on something that I approved that I might not have granted it, but I recall no definite commitment on my part or anybody else's in the bank, or of Dyer ever having asked for \$50,000 for a definite proposition.

Cross-examination.

I make no effort to remember the transactions in my bank.

Testimony of Louis Titus, for Defendant.

LOUIS TITUS, called as a witness for the defendant, testified as follows:

I do not think that any stock of the Doan Oil Company was ever issued for less than par. I know of no sale above par. I have sold stock issued to me by the Doan Oil Company. The sales were effected by me in December, 1919, and in February, 1920. I sold about \$20,000 worth, and I sold it for \$1.00 a share. I do not think the stock has ever had a market value. I have endeavored to sell properties of the Doan Oil Company. I endeavored to sell to several people in New York, Blair & Co., William Salmon Company, White Oil Company, Sanderson & Porter, and General Petroleum Company. Efforts were made to sell the property toward the end of 1919 in New York and the spring of 1920 in San Francisco to the General Petroleum Corporation.

I saw Mr. Porter and asked if he would be interested in buying these properties, and he said that they were interested in buying oil properties, but only where they could get them at tremendous bargains; he further said that they were buying no properties, or attempting to buy no properties except where the owners were so hard-pressed financially that they were down and out, and would have to accept a fraction of what they were [315] worth. He said there were many oil companies in that condition, and that the only properties they were interested in buying were properties of that character, where the companies were in such des-

(Testimony of Louis Titus.)

perate financial straits that they must sell at any price, and if we were in that condition he would negotiate with us, otherwise he would not. That was the end of the conversation, because we told him we were not in such a condition.

We never had a firm, binding offer for the properties owned by the Doan Oil Company outside of the General Petroleum option. That option was negotiated on our side by myself. We received \$50,000 in cash and 1,000 shares of common stock of the General Petroleum Corporation. I kept the same proportion of the money and stock which I and the people whom I had sold stock to held in the Doan Oil Company. The balance Doan took. The proportion that I retained I turned over to the people I had sold stock to, their *pro rata* in it, and kept my *pro rata*.

Cross-examination.

Doan, Porter and myself were present at the conversation with Porter of the American Oil Engineering Company. We made Porter no definite proposition because he said he was not interested except under the conditions which I have already related. We made no proposition to him at all. We did not offer to sell the minority interest in the Doan Oil Company to Porter. I sold some of the stock of the Doan Oil Company to Skinner and some to Eddy. They were partners of mine, not exactly partners of mine, but I am associated with them in business and have been for many years.

(Testimony of Louis Titus.)

They are personal friends of mine and closely associated with me. As to the other people to whom I sold stock, some of them are relatives, or connected by marriage, and two or [316] three of them were merely personal friends of mine whom I had no business association with. It all went to personal friends, or associates, or relatives. As to the policy of Doan and myself with reference to the sale of property in 1919, Doan was very anxious to sell property and urged continually that we make a sale, and I was not averse to that, inasmuch as he was manager of the property and I was willing to accept his judgment on that, and it was for that reason that we made these various efforts to sell the property. I probably objected to Doan that if we sold the property we would have to consider the income tax taking the major portion of the amount received. I have no recollection of any particular conversation, but I know the effect of the income tax was always in our minds and we had some conversation about it. In making any sale of property we must give certain consideration to what portion we would have to pay in income tax, but I do not recall ever having said that I thought the major portion of the price would go in taxes. I doubt very much if that is true. There was another thing we talked about, whether it would be better, in view of the income tax, to have the corporation sell the physical property, or have us, as stockholders sell the stock. Mr. Doan thought it would be better to sell the stock, because we would only have one tax to pay.

Testimony of L. E. Doan, for Defendant (Recalled).

L. E. DOAN, recalled as a witness for defendant, testified as follows:

I remember a conversation with Porter of the American Oil Engineering Company in New York. That was Seaton Porter. Titus accompanied me. Dyer had stated to me that Sanderson and Porter, who were the managers, or principal stockholders in the American [317] Oil Engineering Company had authorized him to offer \$750,000 or \$800,000 for the property, so Titus and I were in New York, and I said, "Let us go down and see Mr. Porter, of Sanderson & Porter." So we went down, and on introducing myself to Mr. Porter, I referred to the fact that Mr. Dyer had approached me on the proposition of selling the property. He said that they were not in the market to purchase oil properties at that time, and in a joshing sort of way he said that unless we were bankrupt, or hard up, and he could get the property for much less than what it was worth, they would not be interested at all. He said that they were in the business of financing companies that were in financial distress.

I met Dyer in San Francisco at the Palace Hotel in November, 1919. I think he went up to my room. He insisted on settling the difficulty that we had in regard to the Doan Oil Company; he wanted to get the matter settled. Well, I said, "Dyer, I am out here for one purpose, only, my mother is very sick, and I am going to Stockton this afternoon on the train, and I won't take up any business

(Testimony of L. E. Doan.)

matter with you or anybody else until this matter is all settled, until my mother either gets better or worse." So I went to Stockton and remained there until my mother died. I had no conversation with him about any business matter at that time, and I refused to talk to him. I did not tell Dyer at that time that the Doan Oil Company stock was worth from five to ten dollars a share. I did not tell Dyer at any time that I would not sell the property of the Doan Oil Company for one and a quarter millions, or that we had been offered one and a quarter millions for the eighty-acre and forty-acre tracts. I never, under any circumstances, told Dyer, or requested him to make a note in his memorandum of account of the \$2667 returned to me on the [318] Considine-Martin deal. I never at any time told him that I was entitled to 20,000 shares of the Considine-Martin oil stock. I never discussed with Dyer the possibility of selling the interim certificates that were issued by the Considine-Martin Oil Company and I never stated to Dyer at any time that Terry was to get 10,000 shares of that stock and that Dyer and myself were to have 20,000.

Cross-examination.

I saw Porter at the office of Sanderson & Porter. I cannot recall if that was the latter part of 1919, or early in 1920. I did not offer to Porter at that time a minority interest in the Doan Oil Company, nor did I say to him that I wanted to retain a majority interest in the Doan Oil Com-

pany, but wanted to dispose of some holdings of that company. We made no proposition to Mr. Porter. Dyer stated that they authorized him to make a cash offer of \$800,000 for the property, and we went there to find out about it. They did not hold up to Dyer's representations.

Thereupon the testimony in evidence in the above-entitled cause closed.

The foregoing was and is all of the testimony, evidence and exhibits offered and received by said Court upon the hearing of the above-entitled action and all of the testimony, evidence and exhibits offered and received by the said Special Master upon the hearing and accounting before said Special Master, and constitutes and was the whole and entire showing of fact made in the above-entitled cause, and no other, further, different, and/or additional testimony, evidence, and/or exhibit *or* [319] *ex* or showing of fact or facts whatever, was offered and received by said Court, or by said Special Master upon said hearing; the foregoing statement of evidence is a full and complete statement of all testimony, evidence, exhibits and showing of fact or facts received by or made to said Court and said Special Master upon the hearing and trial of said action and the accounting before said Special Master; and no testimony, evidence, exhibit or exhibits and/or showing of fact or facts of any character or description, whether oral or written, was offered or received by said Court upon said hearing, or by said Special Master

on the hearing and accounting before said Special Master other than or in addition to the contents of the foregoing "Statement of Evidence."

Be it further remembered that on the 18th day of January, 1921, said Court made and gave an interlocutory decree in said cause and on the 19th day of September, 1921, the Special Master signed and filed his final report herein, and on the 21st day of December, 1921, said Court made and gave its final decree in said cause, both of which said decrees and the said final report are set forth at large in the transcript of record in the above-entitled action and to which decrees and report express reference is hereby made for the purpose of greater certainty, and to both of which said decrees said defendant and appellant then and there duly objected as set forth in their written objections to said decrees filed in said cause and court, and part of the transcript of record herein, to which said objections, for greater certainty, reference is hereby expressly made.

And now comes said defendant and appellant and makes, presents, offers and files the foregoing "Statement of Evidence" as his statement of evidence for use upon the appeal heretofore taken by him from said interlocutory and final decrees.
[320]

WHEREFORE, said defendant and appellant prays that this statement of evidence be settled, allowed and approved by said Court and be ordered

made part of the record in the above-entitled action.

Dated, San Francisco, California, March 26, 1922.

C. W. DURBROW,

JOHN BREUNER, Jr.

Solicitors for Defendant. [321]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Stipulation as to Statement of Evidence.

IT IS HEREBY STIPULATED AND AGREED that the foregoing statement of evidence is true and correct in all particulars, and that the same may be settled, allowed and approved by said Court without further notice, and that the same may be made a part of the record in the above-entitled cause.

Dated, San Francisco, August 15th, 1922.

W. H. METSON,

R. G. HUDSON,

Solicitors for Complainant.

C. W. DURBROW,

JOHN BREUNER, Jr.,

Solicitors for Defendant. [322]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

**Order Settling, Allowing and Approving Statement
of Evidence in the Above-entitled Cause.**

In the matter of the foregoing statement of evidence, duly presented in time by the above-named defendant, appellant herein,—

IT IS HEREBY ORDERED BY SAID COURT that said statement of evidence be and the same is hereby settled, allowed and approved as true and correct in all particulars, and

IT IS HEREBY ORDERED BY SAID COURT that said statement of evidence be and the same is hereby made a part of the record of the above-entitled cause.

Given, made and dated at San Francisco, California, this 15th day of August, 1922.

FRANK H. RUDKIN,
District Judge.

[Endorsed]: Filed Aug. 15, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [323]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 543—IN EQUITY.

B. T. DYER,

Plaintiff,

vs.

L. E. DOAN,

Defendant.

Assignment of Errors.

COMES NOW the defendant, L. E. Doan, by his solicitors, C. W. Durbrow and John Breuner, Jr., and says that the interlocutory decree made and entered in the above-entitled cause on the 18th day of January, 1921, and the final decree made and entered in the above-entitled cause on the 21st day of December, 1921, are erroneous, unjust and prejudicial to the defendant and the defendant files the following Assignment of Errors upon which he will rely upon his prosecution of the appeal from said decrees in the above-entitled action:

EXCEPTION I.

That the Court erred in finding and decreeing that in the latter part of August, 1918, in the State of California, plaintiff and defendant morally associated themselves together and entered into and formed a copartnership for the general purpose of carrying on business together in operating oil bearing lands and interests therein, and in mineral

oils in the United States, and under which they were to acquire oil bearing lands and leases [324] on oil bearing lands and to deal generally in operating and selling oil bearing lands and acquiring interests in co-operative dealing or to deal in the same, and interests in the assets of said corporations, either as copartners or by the formation of corporations to be controlled by plaintiff and defendant, or in which plaintiff and defendant, or either of them, might or should become interested.

EXCEPTION II.

That the Court erred in finding and decreeing that plaintiff and defendant thereupon and thereafter entered upon such copartnership business and did until on or about the 22d day of March, 1920, continue to transact and carry on the said business.

EXCEPTION III.

That the Court erred in not finding and decreeing that the copartnership business between plaintiff and defendant, if any did exist, was dissolved by mutual consent at the time of the formation of the North Texas Supply Company at Fort Worth, Texas, in May, 1919.

EXCEPTION IV.

That the Court erred in finding and decreeing that plaintiff and defendant at any time, either orally or otherwise, associated themselves together and entered into and formed a copartnership for any purpose whatsoever.

EXCEPTION V.

That the Court erred in finding and decreeing that plaintiff and defendant entered upon and transacted and carried on any copartnership business whatsoever.

EXCEPTION VI.

That the Court erred in not finding and decreeing that [325] at the time of the formation of the North Texas Supply Company in the month of May, 1919, plaintiff and defendant terminated and dissolved any and all copartnership business they may have entered upon or transacted or carried on previous to such time.

EXCEPTION VII.

That the Court erred in finding and decreeing that plaintiff and defendant agreed to and did give their attention to and did devote their time to the business of said or any copartnership.

EXCEPTION VIII.

That the Court erred in finding and decreeing that each of said parties did from time to time furnish and supply moneys for the purpose of promoting and carrying on the business of said or any copartnership.

EXCEPTION IX.

That the Court erred in finding and decreeing that the said plaintiff and defendant were to divide

the profits of said business between said plaintiff and defendant equally.

EXCEPTION X.

That the Court erred in finding and decreeing that on or about the 22d day of March, 1920, the said defendant did repudiate said or any partnership.

EXCEPTION XI.

That the Court erred in finding and decreeing that prior to the said date, to wit: the 22d day of March, 1920, the said plaintiff and defendant did acquire certain lands and oil leases in the State of Louisiana.

EXCEPTION XII.

That the Court erred in finding and decreeing that prior [326] to the said date, to wit, the 22d day of March, 1920, the said plaintiff and defendant did acquire shares of stock in the Doan Oil Company and the Martin-Considine Syndicate.

EXCEPTION XIII.

That the Court erred in declaring, ordering and decreeing that the partnership mentioned in the amended complaint and bill was dissolved as and from the 22d day of March, 1920, or as and from any other date.

EXCEPTION XIV.

That the Court erred in not ordering, adjudging and decreeing that the partnership mentioned in the amended complaint and bill, if found to exist

at all, was dissolved as and from the date of the formation of the North Texas *Supply*, to wit, during the month of May, 1919.

EXCEPTION XV.

That the Court erred in declaring, finding and decreeing that the said properties and interests in lands, leases and stocks mentioned in the interlocutory decree entered January 18, 1921, to wit: certain lands and oil leases upon oil lands in the State of Texas and in the State of Oklahoma and in the State of Louisiana and shares of stock in certain corporations, to wit, in the Doan Oil Company and the Martin-Considine Syndicate are in equity assets of the said or any partnership.

EXCEPTION XVI.

That the Court erred in ordering and decreeing that this proceeding be referred to H. M. Wright, Esq., as the Special Master to take and make an account and inquiry as specified in said interlocutory decree entered January 18th, 1921.

EXCEPTION XVII.

That the Court erred in ordering and decreeing that this [327] proceeding be referred to a Special Master to take any accounting whatsoever.

EXCEPTION XVIII.

That the Court erred in not ordering and decreeing that any accounting if taken before a Special Master be confined to a date not later than

the formation of the North Texas Supply Company in the month of May, 1919.

EXCEPTION XIX.

That the Court erred in ordering and decreeing that this proceeding be referred to a Special Master to take and make an account of partnership dealings between the said plaintiff and defendant since the — day of August, 1918, and including an account of dealings of their partnership assets and the acquisition thereof and the disposition thereof and the advances made by each and the receipts obtained by each and the property obtained by each since that time down to March 22d, 1920, and from March 22d, 1920, all the avails and profits received from property on hand, or since received from the sale, trading in or other disposition thereof.

EXCEPTION XX.

That the Court erred in ordering and decreeing that this proceeding be referred to a Special Master to make an inquiry of what the partnership assets, property and effects consist and in what manner and upon what terms and conditions the same might be sold most beneficially to all parties interested therein.

EXCEPTION XXI.

That the Court erred in ordering and decreeing that this proceeding be referred to a Special Master to take an account of any partnership dealings between plaintiff and defendant and to make an in-

quiry as to what the property, assets or effects consist [328] of.

EXCEPTION XXII.

That the Court erred in ordering and decreeing that said partnership estate, property and effects or any property and effects whatsoever be divided or sold with the approbation of the Court.

EXCEPTION XXIII.

That the Court erred in making and entering said interlocutory decree entered January 18th, 1921, and in decreeing in favor of the complainant against the defendant.

EXCEPTION XXIV.

That the Court erred in not making and entering a decree herein in favor of defendant and against complainant for defendant's costs in this suit.

EXCEPTION XXV.

That the Court erred in finding and decreeing in the final decree entered on December 21st, 1921, that 100,000 shares of the stock of the Doan Oil Company were prior to and on November 10th, 1919, or at any other time, the property of plaintiff and defendant.

EXCEPTION XXVI.

That the Court erred in finding and decreeing that the right to purchase 33,333 shares of stock of the Doan Oil Company as being part of the second issue of stock of the said Company issued

on or about the 10th day of November, 1919, was a valuable asset, or any asset whatsoever, to the said or any copartnership.

EXCEPTION XXVII.

That the Court erred in adjudging and decreeing that the defendant, L. E. Doan, account to the plaintiff, B. T. Dyer, for the said 33,333 shares of stock of the Doan Oil Company. [329]

EXCEPTION XXVIII.

That the Court erred in ordering, adjudging and decreeing that this 33,333 shares of stock of the Doan Oil Company be disposed of and divided in the same manner and subject to the same terms and conditions as the original issue to the defendant, Doan, of 100,000 shares of stock of the Doan Oil Company.

EXCEPTION XXIX.

That the Court erred in ordering, adjudging and decreeing that this 33,333 shares of stock of the Doan Oil Company be disposed of and divided between the said plaintiff and the said defendant.

EXCEPTION XXX.

That the Court erred in ordering, adjudging and decreeing that plaintiff was since March 22, 1920, or at any other time, the owner of one-half of 133,333 shares of the capital stock of the Doan Oil Company, to wit: 66,666½ shares.

EXCEPTION XXXI.

That the Court erred in ordering, adjudging and decreeing that in respect to the said 33,333 shares of stock of the Doan Oil Company the exception of the plaintiff to the report of the Special Master is sustained.

EXCEPTION XXXII.

That the Court erred in ordering, adjudging and decreeing that in all other respects the report of the Special Master be confirmed.

EXCEPTION XXXIII.

That the Court erred in sustaining plaintiff's exception No. 1 to the Special Master's report on accounting filed in this cause and which exception is as follows: [330]

“The plaintiff excepts to the said report, and to the findings of fact made by the Special Master, with reference to the second issue of the 33,333 shares of the capital stock of the Doan Oil Company.”

That the portion of the Special Master's report to which the foregoing exception was directed and which contained the findings of fact excepted to by plaintiff is as follows:

SECOND ISSUE OF 33,333 SHARES DOAN OIL COMPANY.

At a directors' meeting of the Doan Oil Company held on November 10, 1919, the corporation offered for sale 100,000 shares of its capital stock

at \$1.00 per share, payable one-half on or before December 15, 1919 and one-half on or before January, 1920, and that said stock be offered to the stockholders as follows:

50,000 to Titus.

33,333 shares to Doan, and

16,667 shares to Lucey,

and that if any of such stockholders failed to subscribe and pay for all or any portion of their allowance, the stock should be subjected to such further action as the Board might decide. It may be said now that the terms of payment as prescribed were apparently not strictly enforced. It is claimed by plaintiff that the Master should determine the value of the stock of the Doan Oil Company in connection with this second issue and in other connections but it does not seem to me material. It is sufficient to say that the evidence shows that the stock was valuable, worth at least the issue price, and in my opinion considerably more. In fact, on March 26, 1920, a dividend of fifty cents per share was declared on the entire capital stock including this second issue of 100,000 shares as well as the first issue of 300,000 shares.

This right given to Doan to subscribe to 33,333 shares by the Company was valuable and was a partnership asset. Good faith to his partner required that Doan should exercise it for the partnership benefit if he could and should also disclose the right to subscribe to Dyer. He did neither. [331]

As to his failure to disclose this subscription right to Dyer, it may be said that this action is, of course, peculiar in that during all this time he was writing voluminously to Dyer about his operations and the success of the Doan Oil Company. However, I draw no special inferences of bad faith for the few months succeeding the passage of the resolution or until about March, 1920, when relations between the partners began to be strained. In any event, it is not evident from the evidence that Dyer would or could have subscribed to this extra stock and so he is not proved to have been harmed by Doan's non-disclosure. He apparently had no considerable funds of his own and his credit is limited by the proof to \$50,000.00. It is therefore not apparent that Dyer could have taken the extra 16,666 shares any easier than Doan could have done so.

As to Doan's failure to exercise his right, Doan has testified that at that time he did not have the funds and this has not been proved untrue. His statement is corroborated by the fact that he did not himself pay for any of this stock until March 23, 1920. There is, of course, evidence the other way in the above quoted letter of January 23, 1920, where Doan said that he would take over Dyer's obligation to pay \$50,000.00 to the partnership on the terms mentioned by Dyer. This, however, can be readily explained by Doan's expectation that he could get a loan of the necessary amount and keep all or a portion of the 12,500 shares for himself. In any event, it must be remembered that

the terms of the partnership implied a discretion in Doan as to how much of his money he should invest. He certainly could not be compelled to borrow nor even to invest funds of his own on hand if he did not deem it wise. Non-investment, therefore, in the second issue of stock, as a fact *per se*, is no evidence of bad faith to the firm and Dyer cannot complain.

The actual disposition of the shares do not change this conclusion. The right to take up 3,333 shares went to S. S. Raymond, geologist of the Company. Doan explains that Raymond desired 10,000 and it was agreed between Titus, Lucey and himself that they would satisfy Raymond's desire by *pro rata* contributions from their respective allotments. Five thousand (5000) shares of this issue went to Claude Gatch and one, Morris. Messrs. Gatch and Morris, business men of high standing in Oakland, California, had in April, 1919, at Doan's suggestion, sent him equal parts of \$5000.00 for investment in oil properties. It was this money which Doan had in hand since the beginning of his operations in Louisiana, part of the capital with which he operated and was, therefore a debt of the partnership in the same [332] sense as was money supplied by Messrs. Titus and Lucey to Doan. As a matter of fact, it should have been satisfied out of the first issue. Its satisfaction out of the second issue was the fulfillment of a partnership liability and cannot be questioned by Dyer.

Fifteen thousand (15,000) shares went to Doan's

relatives, namely, 5,000 to his nephew R. E. Doan; 2500 shares to his sister Hattie E. Doan; 2500 shares to his sister Mary Elizabeth Doan; 4800 shares to his brother, C. E. Doan; and 200 shares to the latter's daughter, Mrs. Elbert C. Parks. The bare fact that this stock went to Doan's relatives raises a presumption of a collusive arrangement for Doan's benefit at Dyer's expense and plaintiff so charges, but the evidence is very plain that each of these persons paid for the stock with his or her own money and that there was and is no agreement for resale to Doan. The money was sent to Doan in the latter part of December, 1919 on his suggestion that the investment was a wise one. If, as he states and as we must assume, he had no money of his own for further investment it was natural and proper that he should invite those near to him to take over his rights to the stock. The fact that their remittances passed through Doan's account or even rested temporarily with him does not change this conclusion.

There remains a balance of 10,000 shares, which the stock-book shows was issued on March 22, 1920 to L. E. Doan and reissued April 2, 1920 to L. E. Doan, Jr. Payment was made by defendant Doan's check on March 23, 1920, in the sum of \$14,498.57 and by the application of a credit to Doan on the books of the Company arising from prior transactions, of \$501.43. This \$15,000.00 covered the 10,000 shares in question and the 5000 issued to Gatch and Morris. Of this amount \$10,000.00 was, of course, Doan's own funds. There is

considerable testimony aiming to prove that Doan had promised his son an interest in the Doan Oil Company in the summer of 1919, partly out of the natural affection and interest and as a regard for meritorious conduct in the National service during the war. This evidence seems to me immaterial. Doan's first duty at this time was to his partner. If Doan had invested this money and caused the issuance of 10,000 shares to his son at the time he promised it to him in the summer of 1919, my conclusion would be that lacking Dyer's consent, such an investment of his money would have been unauthorized and would have to come out of Doan's share of the assets. But it must be remembered that Doan had the right, as Dyer had, to dissolve the partnership at any time. He did so by repudiating it on the morning of March 22, 1920 and his investment the next day was after the termination of the partnership. The point is [333] possibly debatable, but my mature conclusion is that this purchase of shares by Doan was not a partnership transaction. I conclude that the amount of shares here under discussion, 33,333 shares, did not and do not constitute an asset of the partnership.

EXCEPTION XXXIV.

That the Court erred in sustaining plaintiff's exception No. 2 to the Special Master's report on accounting filed in this cause and which exception is as follows:

“The plaintiff excepts to the said report, and to the findings of fact made by the Special Master, wherein it is determined and found that the plaintiff is not entitled to an accounting from the defendant with reference to the second issue of the 33,333 shares of the capital stock of the Doan Oil Company.”

That the portion of the Special Master's report to which the foregoing exception was directed and which contained the findings of fact excepted to by plaintiff is set forth and quoted in the foregoing exception, to wit: Exception XXXIII.

EXCEPTION XXXV.

That the Court erred in overruling the defendant's exceptions to the Special Master's report on accounting.

EXCEPTION XXXVI.

That the Court erred in overruling defendant's exception to the report of the Special Master on accounting and being exception No. 1 and which is as follows:

“Exception is made to the report in so far as it holds that 7,000 shares of the stock of Doan Oil Company, in addition to the 93,000 shares originally paid for by defendant, are partnership assets, and that plaintiff is entitled to one-half thereof on accounting to defendant for \$3,500 with interest; or that plaintiff is entitled to any dividends which have accrued thereon and been received by defendant.”

for the reason that the evidence showed that the defendant, L. E. Doan, received the said 7,000 shares of stock in lieu of salary [334] from the Doan Oil Company and that the testimony of the plaintiff, B. T. Dyer, sets forth that it was understood between him and the defendant, Doan, that each should retain their salaries, to wit: Doan, his from the Doan Oil Company, and Dyer, his from the North Texas Supply Company and from the American Oil and Engineering Company.

EXCEPTION XXXVII.

That the Court erred in overruling defendant's exception to the report of the Special Master on accounting and being exception No. 2 and which is as follows:

"Exception is made to the report in the particular that it does not require plaintiff to account to defendant for one-half of the stock of the North Texas Supply Company, which the evidence shows plaintiff agreed to subscribe and pay for on behalf of the 'partnership,' and one-half of the salary which plaintiff received from the North Texas Supply Company and from the American Oil Engineering Company."

EXCEPTION XXXVIII.

That the Court erred in overruling the defendant's exception to the Special Master's report on accounting and being exception No. 4 and which is as follows:

“Exception is made to the report in so far as it undertakes to interpret the decree entered by the Court herein as holding that the shares of the General Petroleum Company, or any moneys derived from this transaction by defendant, are a part of the partnership assets; or that plaintiff is entitled to any dividends which have accrued thereon and been received by defendant, and in holding that plaintiff is entitled to one-half of the moneys received by defendant in this transaction and one-half of the proceeds of the sale of two shares of the stock of the General Petroleum Company to Louis Titus, and that plaintiff is entitled to one-half of the 248 shares of stock of this company or any other interest therein.”

inasmuch as the evidence shows that the defendant, Doan, acquired the stock of the General Petroleum Company and received dividends on said stock as a result of an option given by the defendant, [335] Doan, upon his stock of the Doan Oil Company and is independent of and foreign as to any transaction whatever between the plaintiff, Dyer, and the defendant, Doan.

EXCEPTION XXXIX.

That the Court erred in overruling the defendant's exception to the Special Master's report on accounting and being exception No. 5, which is as follows:

“Exception is made to the report in the particular that it does not allow defendant

interest upon all moneys advanced by him from the date said moneys were advanced, as shown by defendant's account heretofore filed with the Master, to date."

inasmuch as the evidence shows that the defendant advanced all moneys whatsoever for the acquisition of the stock of the Doan Oil Company and that plaintiff, Dyer, has not, at any time, contributed any amount whatsoever toward the purchase price of said stock.

EXCEPTION XL.

That the Court erred in ordering, adjudging and decreeing that the plaintiff is entitled to one-sixth of the sum of \$50,000, and also 1,000 shares of the capital stock of the General Petroleum Corporation, to wit: the sum of \$8,333.33 cash, and also 166 $\frac{2}{3}$ shares of the General Petroleum Corporation.

EXCEPTION XLI.

That the Court erred in ordering, adjudging and decreeing that plaintiff is entitled to 165 $\frac{1}{2}$ shares of the General Petroleum Corporation or any other stock whatsoever of said corporation.

EXCEPTION XLII.

That the Court erred in ordering, adjudging and decreeing that plaintiff is entitled to credit for all dividends or any [336] dividends received by defendant since April 16, 1920, on stock of the General Petroleum Corporation, to wit: 165 $\frac{1}{2}$ shares or any other number of shares and that plaintiff

is entitled to credit for his proportion or any proportion whatsoever of future dividends that may be paid by said General Petroleum Corporation.

EXCEPTION XLIII.

That the Court erred in ordering, adjudging and decreeing that 15,000 shares of Considine-Martin Oil Company are or were at any time a partnership asset.

EXCEPTION XLIV.

That the Court erred in ordering, adjudging and decreeing that the plaintiff is entitled to 7,500 shares of stock of the Considine-Martin Oil Company, or any part thereof, and to all dividends declared thereon and paid to defendant.

EXCEPTION XLV.

That the Court erred in ordering, adjudging and decreeing that a receiver be appointed to take charge of the property and assets of the copartnership found by the Court on or before the 5th day of January, 1921, unless the defendant deposit with the Clerk of the Court one-half of 133,333 shares of the capital stock of the Doan Oil Company and one-half of the capital stock of that certain corporation commonly known and designated as the Considine-Martin Oil Company, to wit: 7,500 shares, and also 165½ shares of the capital stock of that corporation commonly known and designated as the General Petroleum Corporation.

EXCEPTION XLVI.

That the Court erred in ordering, adjudging and decreeing that the defendant deposit any shares of stock whatsoever with the Clerk of said Court under any terms and conditions whatsoever.
[337]

EXCEPTION XLVII.

That the Court erred in ordering, adjudging and decreeing that each of said 66,666½ shares of Doan Oil Company stock, and each and every of said shares of Considine-Martin Oil Company stock, to wit: 7,500 shares, and each and every of said shares of the General Petroleum Corporation stock (165½ shares) should be issued in the name of B. T. Dyer or properly endorsed so that the same could be assigned to and transferred to him.

EXCEPTION XLVIII.

That the Court erred in ordering, adjudging and decreeing that should the defendant appeal, that plaintiff should not be required to pay the defendant any interest on the sum of \$12,645.90, less costs, for the period of time commencing with the filing of notice of such appeal and ending with the filing of the mandate on appeal with the Clerk of said Court and which said sum is the amount required to be paid by the plaintiff, Dyer, to the defendant, Doan, under the findings of said Court and the decrees entered therein.

EXCEPTION XLIX.

That the Court erred in ordering, adjudging and decreeing that the plaintiff recover his costs.

EXCEPTION L.

That the Court erred in granting the plaintiff's motion to retax his costs of suit and allowing plaintiff as costs, the sum of \$1,500.00 paid by plaintiff to the Special Master and being one-half of the Special Master's fee for his services upon the accounting, the other one-half of said fee having been paid by defendant and not having been considered in any accounting between the parties. [338]

EXCEPTION LI.

That the Court erred in making and entering said final decree entered December 21st, 1921, or in decreeing in favor of the complainant and against this defendant.

WHEREFORE, defendant prays that said interlocutory decree dated January 18th, 1921, and said final decree dated December 21st, 1921, be reversed, and that said District Court be directed to dismiss the amended complaint and bill herein on file, and for such other and further relief as may be meet and equitable.

C. W. DURBROW,
JOHN BREUNER, Jr.,
Solicitors for Said Defendant.

[Endorsed]: Filed Jan. 16, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [339]

(Title of Court and Cause.)

Petition for Appeal.

To the Honorable WILLIAM C. VAN FLEET, District Judge:

The above-named defendant feeling aggrieved by the interlocutory decree rendered and entered in the above-entitled cause on the 18th day of January, 1921, and by the final decree rendered and entered in the above-entitled cause on the 21st day of December, 1921, does hereby appeal from the said decrees to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and he prays that his appeal be allowed and that a citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decrees were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California.

And your petitioner further prays that the proper order relating to the security to be required of him be made.

Dated at San Francisco, California, this 16th day of January, 1922.

L. E. DOAN,

Defendant.

C. W. DURBROW,

JOHN BREUNER, Jr.,

Solicitors for Said Defendant.

[Endorsed]: Filed Jan. 16, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [340]

(Title of Court and Cause.)

Order Allowing Appeal.

On motion of C. W. Durbrow, Esq., and John Breuner, Jr., Esq., solicitors and counsel for defendant,

IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals for the 9th Circuit of the United States from the interlocutory decree heretofore filed and entered herein on the 18th day of January, 1921, and the final decree heretofore filed and entered herein on the 21st day of December, 1921, be and the same is hereby allowed and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be transmitted to said United States Circuit Court of Appeals for the 9th Circuit.

IT IS FURTHER ORDERED that a bond on appeal be fixed at the sum of \$500, the same to act as a supersedeas bond for costs and damages on appeal.

Dated: January 16th, 1922.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Jan. 16, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [341]

(Title of Court and Cause.)

Bond on Appeal.

WHEREAS, the above-named L. E. Doan has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the interlocutory decree made and entered herein on the 18th day of January, 1921, and the final decree made and entered herein on the 21st day of December, 1921,

NOW, THEREFORE, in consideration of the premises, the undersigned, National Surety Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake and promise on the part of the defendant, L. E. Doan, that the said defendant will prosecute his said appeal to effect and answer all costs and damages if he fail to make good his plea and appeal, not exceeding the sum of \$500, to which amount it acknowledges itself justly bound.

Dated at San Francisco, California, this 13th day of January, 1922.

NATIONAL SURETY COMPANY. (Seal)

By FRANK L. GILBERT,

Resident Vice-President.

By A. C. ROBESON,

Resident Assistant Secretary. [342]

State of California,

City and County of San Francisco,—ss.

On the 13th day of January, 1922, personally appeared before me, C. B. Sessions, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and sworn Frank L. Gilbert, Resident Vice-President and A. C. Robeson, Resident Assistant Secretary known to me to be the said officers, respectively, of the National Surety Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the said City and County of San Francisco the day and year in this certificate first above written.

[Seal]

C. B. SESSIONS,

Notary Public in and for the City and County of
San Francisco, State of California.

The within bond is approved this 16th day of
January, 1922.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 16, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [343]

(Title of Court and Cause.)

Praecipe for Transcript of Record on Appeal.

To the Clerk of the Said Court:

Sir:

Please prepare record on appeal and incorporate therein:

1. Complaint (Amended).
2. Answer.
3. Memorandum Opinion, filed Jan. 4, 1921.
4. Interlocutory Decree, filed Jan. 4, 1921.
5. Special Master's Report on Accounting, filed Sept. 19, 1921.
6. Defendant's Exceptions to Special Master's Report, filed October 7, 1921.
7. Plaintiff's Exceptions to Special Master's Report, filed Oct. 7, 1921.
8. Memorandum Opinion on Exceptions to Report, filed Nov. 21, 1921.
9. Order, filed Dec. 2, 1921, Granting Plaintiff's Exceptions, and Overruling Defendant's Exceptions.
10. Final Decree, filed Dec. 8, 1921.
11. Memorandum Opinion on Motion to Retax Costs.
12. Order Granting Retaxing of Costs.
13. Statement of Evidence.
14. Petition for Appeal.
15. Assignment of Errors.
16. Order Allowing Appeal.
17. Bond on Appeal.

18. Citation.

19. This Praecipe.

C. W. DURBROW,
JOHN W. BREUNER, Jr.
Attorneys for Deft.

Receipt of a copy of the within is hereby admitted this 27th day of March, 1922.

W. H. METSON,
R. G. HUDSON,
Attorneys for Pltff. [344]

[Endorsed]: Filed Mar. 28, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk [345]

(Title of Court and Cause.)

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing three hundred and forty-five (345) pages, numbered from 1 to 345, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on appeal in the above-entitled cause, as the same remain on file and of record in the office of the clerk of said Court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$157.70; that said amount was paid by the defendant; and that the original citation issued in said cause is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said District Court, this 23d day of August, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [346]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to B. T. Dyer,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the Southern Division of the United States District Court for the Northern District of California, Second Division, wherein L. E. Doan is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 16th day of January, A. D., 1922.

WM. C. VAN FLEET,
United States District Judge. [347]

Receipt of a copy of the within Citation on Appeal is hereby admitted this 16th day of January, 1922.

W. H. METSON,
R. G. HUDSON,
Attorneys for Plaintiff.

[Endorsed]: No. 543—In Equity. United States District Court for the Northern District of California, Southern Division. B. T. Dyer, Appellant, vs. L. E. Doan. Citation on Appeal. Filed Jan. 18, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3915. United States Circuit Court of Appeals for the Ninth Circuit. L. E. Doan, Appellant, vs. B. T. Dyer, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division. Filed August 23, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

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In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.

L. E. DOAN,

Appellant,

vs.

B. T. DYER,

Appellee.

**Stipulation and Order Extending Time to and In-
cluding August 25, 1922, to File Record and
Docket Cause.**

IT IS HEREBY STIPULATED by and between
the parties hereto that the return day of the citation
on appeal to the United States Circuit Court of
Appeals for the Ninth Circuit and the time in which
to file the transcript of record and docket the above-
entitled cause be and the same is hereby en-
larged and extended up to and including the 25th
day of August, 1922.

Dated: August 10, 1922.

C. W. DURBROW,
JOHN BREUNER, Jr.,
Attorneys for Appellant.
W. H. METSON,
R. S. HUDSON,
Attorneys for Appellee.

It is so ordered this 10th day of August, 1922.

W. H. HUNT,
Judge.

[Endorsed]: No. 3915. In the United States Circuit Court of Appeals, in and for the Ninth Circuit. L. E. Doan, Appellant, vs. B. T. Dyer, Appellee. Stipulation and Order Extending Time. Filed Aug. 10, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.